United States Court of Appeals

for the Second Circuit



APPELLANT'S APPENDIX

75-1360

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P/S

In The

United States Court of Appeals

For The Second Circuit

UNITED STATES OF AMERICA,

Appellee,

vs.

THOMAS ZAMMAS,

Appellant.

On Appeal from the United States District Court for the Southern District of New York

APPELLANT'S APPENDIX

Volume III, pp. 601a – 950a

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A Between 12:30 and 1 o'clock, yes, sir.

Q And the purpose was to meet Mr. Rodman, was that correct?

A The purpose was to meet with the people that were there.

Q You didn't know who was there, did you?

A There was only one of three people or all three people there, Mr. Rodman, Mr. Zammas or Dennis. The phones constantly rang, from all the other brokers telling Mr. Rodman what happened, and hence that was the central place of what happened.

Q Did you ever go to that apartment in the month of October of 1972?

A I believe I did.

Q What purpose did you go there for in October of 1972?

A I refuse to answer that on the grounds it might tend to incriminate me.

MR. LOWE: Your Honor, may we approach the side bar?

THE COURT: Yes.

(At the side bar.)

MR. LOWE: I am not sure what to do about this, but it seems to me that if he can legitimately claim

that an answer to the question of what he was doing there in October might tend to incriminate him is, I would say, grossly contradictory to his previous testimony that he didn't do anything wrong, that he didn't think there was anything criminal being done.

Under those circumstances, I think he should be advised as to the fact that he can only refuse to answer if he believes it will involve him in some criinal activity and otherwise he must answer the question.

MR. BERGER: He has been so advised, Mr. Lowe. He has an attorney.

THE COURT: You say that he has previously testified that nothing criminal went on in the apartment?

MR. LOWE: Something to that effect; at least from his point of view, that he didn't think there was anything wrong being done.

MR. ENTIN: The question being asked was not with regard to October. It is a different month.

THE COURT: The question, I guess, you have in mind is whether he, the witness, believes that Mr. Rodman committed a crime?

MR. BERGER: That is the question.

THE COURT: I sustained an objection to that. That is different from whether this witness believes that the answer may tend to incriminate him. Those are not the same propositions.

MR. LOWE: I don't think he believes that, your Honor, because to a certain extent he has previously given testimony in another proceeding about things that happened in October, November, December, January, February.

MR. BERGER: But he doesn't have immunity now.

MR. LOWE: He didn't then either.

MR. BERGER: Are you claiming waiver on his part?

MR. LOWE: No, because it is a different proceeding, but I think he may not really understand what the implication is at this point.

MR. ENTIN: I think he is talking about October now. I think the Court has appointed a counsel to represent him. Has his counsel been advised that he has already given testimony with regard to matters in October, November and December?

MR. LOWE: I don't know that I told his counsel the dates about which he testified.

MR. ENTIN: I think his counsel should be advised as to the area we are going into now.

THE COURT: What is the area you are going into?

MR. ENTIN: There is another grand jury sitting now on another stock, and the difficulty occurred in the month of October, I think.

MR. LOWE: I am not sure when it began exactly, but during the period of time after the collapse of Power Conversion, the defendants in this case, Mr. Wymbs and a number of other people became involved in other stocks, among which were stocks known as Indecon and Tom Ward, Tom Ward Enterprises, Inc., a theatrical talent agency.

The Government believes at this point, with very good reason, that the trading and other activities in both of those stocks were in violation of the securities laws and amounted to criminal violations thereof, involving among other things placing orders when there was no money to pay for them, bribing brokers to tout the stock to their customers, and things of that nature.

I have evidence of the facts I am now alleging.

THE COURT: Well, the man is invoking his Fifth Amendment right as to that.

MR. ENTIN: His counsel should be advised that he has already given testimony to Mr. Lowe and his counsel

have five minutes to advise his man where he is. I don't think his counsel has given him intelligent advice because his counsel doesn't know what it is about.

MR. LOWE: That may be correct. I don't know. I do know he has testified fairly throughly about the events I am talking about, or a portion thereof, on a prior occasion.

MR. BERGER: That has nothing to do with right now.

MR. LOWE: I feel that we should take whatever steps we can to encourage answers to the questions you seem to want answers to.

THE COURT: The only way to do that is have his lawyer talk to him.

MR. ENTIN: I think the Court set that precedent earlier and should live by it.

THE COURT: We will take a five-minute recess.

(In open court.)

THE COURT: We will take a five-minute recess at this time and the jury is excused.

(Jury leaves the courtroom.)

THE COURT: Mr. Concannon, do you want to approach the bench?

MR. CONCANNON: Yes, your Honor.

(At the side bar.)

THE COURT: The U. S. Attorney and the defense counsel feel that you ought to talk to your client further about his having gone to the apartment in October '72, because the U. S. Attorney believes that your client has previously testified concerning those events in another matter, another proceeding, and he is now invoking his Fifth Amendment as to that day, October '72.

Maybe you better go over it with him.

MR. BERGER: Your Honor, but the Court has not taken the position that there was a waiver of his Fifth Amendment rights.

MR. LOWE: I don't suggest there is a waiver, I suggest he doesn't understand what he is doing.

MR. BERGER: But he has not waived his rights.

(In open court.)

MR. CONCANNON: Your Honor, may I step outside with the witness?

THE COURT: Yes.

(Recess.)

THE COURT: All right, let's bring the jury in and proceed.

(Jury present.)

THE COURT: You may continue, Mr.Berger.

MR. BERGER: Would you read the last question.

(Question read.)

THE WITNESS: Your Honor, could I clarify one question? A time, the time Power Conversion stopped trading, was it approximately the 5th of October? Is there anyone that --

MR. BERGER: October 6th, is that the date?

MR. LOWE: I think that is a matter of public record that trading inthe stock of Power Conversion ceased on October 6, 1972.

THE WITNESS: Which was a Wednesday.

Your question again?

Q Did you go to the apartment in October of 1972?

A Yes.

Q Did you go to the apartment on October 6, 1972?

A No.

Q Did you go to the apartment anywhere between October 6 and October 13, 1972?

A Yes, Idid.

Q Do you recall the date?

A No.

Q But is your point of reference October 6?

A Let me answer your original question, if I may. You asked me what did I do in the apartment the month of October. May I answer that question?

Q I will get back to that question. Let's get the time.

A I was asked to come there that week upon at least three occasions by Mr. Rodman and Mr. Zammas.

Q Was that after October 6?

A Yes, sir.

Q And before October 13, or thereabouts?

A Yes, sir.

Q If you were to pinpoint the date, when would that be?

A I wouldn't pinpoint it.

Q But it would be in that week?

A I would say it was.

Q How manytimes were you there in that week?

A At least twice.

Q During that week were there any conversations with regard to a stock -- withdrawn.

Do you recall a meeting during that week in which Mr. Zammas, Mr. Rodman, Darnice Gennaro and you were present and discussed a stock, I think it is Tom Ward?

A At that point, no, sir.

Q Which stock did you discuss at that meeting?

A We discussed Power Conversion, what to do.

Q That was the week of --

A Following the 6th, after the stock had been withdrawn from the trading, and everybody had sales all over the place, and partial sales and sales were being on order and discussed who was doing what and what was being on order and what was not being on order, and I was trying to find out where the blankety-blank stood.

End 4B

Q Was there any discussion that week of the fact that all this money allegedly paid with Power Conversion had gone down the drain?

A Yes.

Q At that meeting?

A I don't know at that particular meeting, but the point was brought up that Mr.Zammas had options out --

MR. ENTIN: Objection, your Honor. The time, place and who made the statement.

A (continuing) Okay, at the meeting Mr. Zammas spoke and uttered that he was in financial disaster. He mentioned that he owed Dean, Witter hundreds of thousands of dollars on puts and calls.

He mentioned he was in debt to some other houses and that Power Conversion had wiped him out.

Q Was there anyone else present at that meeting except the four people I mentioned?

A I don't believe so.

Q What did Darnice Gennaro say at that meeting?

A Nothing except that she mentioned that her ties with Mr.Stewart of Executive Securities of Miami, that he was also hurt in Power Conversion.

Q Did she say anything about the fact that Rodman's friends had been wiped out in the stock?

A I don't recall her mentioning that. I believe it was said however by Mr. Rodman that accounts he had discretionary control upon were hurt.

Q You say "I believe." Do you recall him saying that?

A Yes, I do.

Q To whom did he say it?

A If, in fact, four people are sitting at a table I can't specify which one it was directed at. It was said to a group.

Q This was a dark day, wasn't it, a real black day in the market for you people, wasn't it?

A For you people?

Q Yourself, you lost close to a quarter of a million dollars, Mr. Rodman?

A I was unhappy I would say, yes, sir.

Q You remember that meeting very vividly?

A I remember gloom very vividly. I was very upset and Mr. Goldfarb might have even been at that meeting, come to think of it.

Q Where were the various people seated at that meeting?

A I can't tell you,sir. Over a two-hour period people move from chair to chair.

Q Are you sure that Mr. Rodman was at that meeting?

A I believe he was.

Q Are you sure?

A I believe he was.

Q Mr. Goldfarb?

A I believe he was too, at that meeting, or one subsequently that week. He was completely bombed out of his mind. I remember he stayed overnight because they couldn't even get him to stand up. He was wiped out.

Q Was there a lot of drinking going on?

A Not in the apartment, but Mr. Goldfarb had gone out and had gotten inebriated and came back completely drunk and stayed the night.

Q When you had gotten there, when you came to the apartment, who was there when you got there?

A I can't recall, sir.

Q Do you remember anybody coming in after you were there?

A I remember all people coming in and leaving. For instance, I remember being there and a broker would come in and say, "Bob, would you please go down and sit in the lobby," and I would sit downstairs in the lobby

and they would take with this broker, Mr. Rodman and Mr.Zammas, and when the man came out I would go back upstairs again. This was the general procedure. I always left the room, I was asked to leave the room whenever a broker came up to make a deal or whatever reason he came for.

MR. ENTIN: Objection, your Honor, as to the characterization he was asked to leave the room whenever somebody came to make a deal.

If in fact he left the room he wouldn't know what the purpose was.

THE COURT: Yes. Sustained.

MR.ENTIN: Thank you, your Honor, and I have a motion to make outside the presence of the jury at the side bar.

THE COURT: In a few minutes.

MR. ENTIN: I will reserve that to 4:30. Thank you.

Q Do you recall any conversation to Mr.Zammas and Darnice Gennaro?

A Nothing specific.

Q They didn't argue?

A Nothing specific.

Q Was there an argument between Mr. Rodman and Mr.Zammas?

A I believe there was an argument. If it was not that day, there was an argument approximately that time between Mr. Rodman and Mr. Zammas.

Q After the stock fell out?

A Yes,sir.

Q And Miss Gennaro didn't say anything to Mr. Rodman or Mr.Zammas during that argument?

A I didn't say that. I said I do not recall what she said if she said anything. I remember that words were spoken very violently between Mr. Rodman and Mr. Zammas.

MR. ENTIN: Your Honor, I object to the characterization of the word "violently." I move to strike that.

THE WITNESS: Argumentative.

5A

THE COURT: Strike the characterization.

MR. LOWE: Your Honor, I think under the rules of evidence a witness is now permitted to testify as to his opinion as to the tone, and things of that nature, with which words are spoken, so that he should be allowed to say that, if he observed it and came to a conclusion about it.

THE COURT: Read the question and the answer, Mr. Reporter.

(Record read.)

Q Do you recall how Miss Gennaro --

THE COURT: Just a moment.

MR. ENTIN: Your Honor, my objection is the word "violently" does not charqcterize the nature of a word.

THE COURT: He is giving his opinion as to the way the persons involved were speaking to each other. Overruled.

Q At that meeting, the first meeting after the stock Power Conversion was suspended, on or about the 6th of October, what time did you leave that apartment?

A I would say some time around 7 p.m., 8 p.m., when I went to Jersey.

Q Who was left in the apartment when you left?

A I believe Mr. Rodman and Miss Gennaro.

Q Did you notice that Mr. Rodmam and Miss Gennaro were not on speaking terms through all of August and September of 1972?

A Did I know that? Did I know that of my own knowledge?

Q Yes.

A Having been out to dinner with them upon two or three occasions, I find it hard to believe.

THE COURT: Excuse me, Mr. Berger, we are going to recess now until 9:30 tomorrow morning. Which is a half hour earlier, ladies and gentlemen, than we have been starting. As I told you, we are going to recess at 2 o'clock tomorrow for the day. You are excused now until 9:30. Please arrive at 9 o'clock.

(The jury left the courtroom.)

THE COURT: Do you have a motion, Mr. Entin?

MR. ENTIN: Yes, your Honor. I would like to move at this time for a mistrial based upon the characterization that deals were being made.

Mr. Wymbs has testified continually to

brokers coming up to that apartment making deals, and it was only in the last five or six minutes that he characterized in fact he was asked to leave whenever one of these "deals" were made. I think these continued reference to these alleged deals have prejudiced the situation beyond redemption and I move for a mistrial on that basis.

THE COURT: The motion is denied. The witness is excused until 9:20 tomorrow morning.

THE WITNESS: Thank you, your Honor.

THE COURT: Mr. Lowe, how many more witnesses do you have after this witness?

(The witness left the courtroom.)

MR. LOWE: I think six, your Honor. My mind isn't working properly at the moment, but if I can have a moment I will give you an answer.

THE COURT: Can we get through with your case on Monday?

MR. LOWE: I think so, your Honor. I had kind of hoped we could make it tomorrow, but obviously we won't. I think the government should rest on Monday.

THE COURT: All right.

The defendants are directed to have their

witnesses here in the afternoon, at 2 o'clock, in the event the government rests and we will proceed with your case. Please bear that in mind.

Your requests of charge will be in tomorrow?

MR. ENTIN: Yes, your Honor.

THE COURT: We will recess now until 9:30 tomorrow morning.

(Adjourned to August 1, 1975, at 10:30 a.m.)

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United States of America

vs.

William Eric Aiken
William Rodman and
Thomas Zammas

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New York, New York.
August 1, 1975 - 9:30 A.M.

(Trial resumed.)

(In open court; jury absent.)

THE COURT: Good morning, ladies and gentlemen.

MR. ENTIN: May I approach the side bar, your Honor?

THE COURT: At the side bar.

MR. ENTIN: Your Honor, I believe there was either an unintentional or intentional violation of the witness rule yesterday Mr. Wymbs, when he would go back to the witness room during recesses, did discuss or attempted to discuss what was going on in the case with the other witnesses.

Mr. Lowe is aware of how I probably know this and I am bringing it to the Court's attention and I don't think any particular harm was done by it,but I would like an instruction to Mr. Wymbs not to do the same thing today, before the jury comes in, to go and discuss the testimony

with Miss Palumbo, a Government witness, and Mr. Flocco, and I don't believe Mr. Lowe knew about this. He wouldn't have tolerated it if he did, I am sure.

MR. LOWE: You are right, I don't know about it. You are right I don't condone it and I would say, however, that based on my knowledge of the facts of this case, those three people have nothing in common.

MR. ENTIN: It is still a violation. There are people in the witness room today that he would have a common knowledge with. Mr. Orenstein is in there, and I want to prevent that sort of thing from happening today.

THE COURT: All right, I will tell him.

Is there anything more?

MR. BERGER: Yes, your Honor. My client does not seem to be here yet and I have no knowledge as to why he is not.

THE COURT: Ohere does he live?

MR. LOWE: Muncey, New York.

MR. BERGER: He is not there now. Somewhere out on the Island.

THE COURT: We told everybody 9:30, that we are starting a differenthour this morning. We are recessing at two o'clock.

MR. BERGER: I spoke to him as late as 1:30 yesterday.

THE COURT: 1:30 yesterday?

MR. BERGER: In the morning, today, and I didn't repeat it to him. I assumed he heard it the same as everyone else did. He has always been here before 9:30. I have always met him here before 9:30. I can only assume something has happened on the road. I know that it is not intentional. I think even if he didn't know that we were starting at 9:30 today, his regular habit has been here before 9:30 to confer with me and I told him I would confer with him this morning, so I believe something must have happened.

THE COURT: Where did you say he lives?

MR. BERGER: It is on Long Island. He is staying at a summer home on the beach, I think.

MR. ENTIN: If Mr. Berger has a phone number, maybe he can call there and make inquiry.

MR. BERGER: I am sure he is on the way in.

THE COURT: All of us know that if you go to Long Island and you have to be in New York City at 9:30, the chances are 90 per cent you will be late. He should have stayed in New York City. That is what he should have done, to be here at 9:30 this morning.

MR. BERGER: Your Honor, he has been staying there since the trial began. His family is there.

THE COURT: Do you want to call his house?

MR. BERGER: I am sure he has left, your Honor.

THE COURT: Mr. Berger, call his house.

MR. BERGER: Yes. There is a phone right there. I have to make two calls, your Honor. One is to get his number which my secretary has.

(Recess.)

(In open court; jury present.)

THE COURT: Good morning, ladies and gentlemen. Are you read to proceed, Mr.Berger?

R O B E R T J. W Y M B S resumed.

MR. BERGER: Yes, your Honor.

CROSS-EXAMINATION (continued)

BY MR. BERGER:

Q Mr. Wymbs, yesterday during the day while you were testifying you appeared to be under severe discomfort and pain, is that correct?

A Yes.

Q Were you taking medication during the day?

A Yes.

Q What medication were you taking?

A I was taking two types of medication. I was taking Doan's pills and Valium.

Q How many milligrams of Valium did you take yesterday?

A Yesterday I believe I testified in court that I took 20 milligrams, 10 in the morning and 10 in the afternoon.

Q As I understand it, you have a back problem?

A That is correct, sir.

Q This Valium, are you taking it under the direction of a physician?

A Yes, I am, sir.

Q May I have the name of your doctor and address?

A My doctor is Dr. Sullivan.

Q His first name?

A Cornelius.

Q What is his address, Mr. Wymbs?

A Basking Ridge, New Jersey.

Q Is there a street address?

A I do not know it, sir.

Q When is the last time that you visited Dr. Cornelius Sullivan?

A I visited Dr. Cornelius Sullivan approximately two months ago, sir.

Q Was it with regard to your present complaint?

A My present complaint, sir?

Q Your back problem?

A Yes, it was, sir.

Q Was it two months ago that he prescribed the Valium?

A I believe I called him after that and he did prescribe it via over the phone at another time.

Q Did he prescribe it when you went to see him two months ago?

A I believe he prescribed Valium and a muscle relaxant, an additional drug which I didn't take today nor have I take in the last week or so.

Q Valium was not the muscle relaxant?

A No, sir.

Q Then you called him on the phone?

A That is correct, sir.

Q About how long ago was that?

MR. LOWE: Your Honor, I don't see that any of these details are particularly relevant to this cross-examination.

THE COURT: I don't either, Mr. Berger.

MR. BERGER: May I have the indulgence of the Court. I have a reason.

THE COURT: All right.

Q This phone call to the doctor, when was that?

A I do not have the exact date, sir.

MR. LOWE: Your Honor, Mr. Berger may have a reason, but I don't think that reason is relevant.

THE COURT: Approach the bench.

(At the side bar.)

MR. BERGER: Your Honor, I want to bring out this man took 20 milligrams of Valium for the purpose of remaining calm during cross-examination, so he could give a calm appearance to the jury and to frustrate my ability to cross-examine him to the full extent and get his reactions that I would normally get if he were not sedated.

THE COURT: As I indicated yesterday, this witness hasn't given me any impression that he is under the influence of drugs and he is responding, and he seems quite alert and his answer to every question, except when he is confused about the date of the meeting, was perfectly normal.

When a lawyer says did you attend a certain meeting, when there was more than one meeting about, that is the kind of evidence he was confused on. In fact he is one of the better witnesses who has testified here so far. He is articulate.

MR. BERGER: I think the jury has a right to know he took 20 milligrams.

THE COURT: Yes, but this business when he calls his doctor, obviously he can't remember things like that.

MR. BERGER: Your Honor, I personally don't believe he called his doctor and Valium was prescribed for the back condition. I believe he took it intentionally for the purpose of appearing calm and for the jury.

THE COURT: You can investigate that over the weekend. Call his doctor. He has testified his doctor prescribed this.

MR. BERGER: I just want to set a predicate, your Honor. I intend to call his doctor.

(In open court.)

THE WITNESS: Excuse me,your Honor, to the point of doctor, I have something to say.

THE COURT: Do you want to change one of your answers?

THE WITNESS: I wish to add something. I do not wish to change it.

THE COURT: All right.

THE WITNESS: I have been going to a chiropractor, Dr. J. Jacobson, which I went to yesterday morning, and the day

before, and on other occasions between the time I just spoke to you on Dr. Sullivan, sir.

Q The chiropractor didn't prescribe Valium, did he, sir?

A No, he didn't, sir.

Q Mr. Wymbs, yesterday you testified that you were at the apartment of Mr. Zammas at 35th Street and Lexington Avenue.

A Of Mr. Zammas and Mr. Rodman,yes.

Q 35th Street and Lexington Avenue.

And, you saw Mr. Rodman turning over an envelope with $5000 that was to go to Mr. Perlmutter, is that correct?

A That was my impression, sir.

Q At the time of that meeting, was the name Mr. Perlmutter mentioned?

A Yes, it was, sir.

Q Did Mr. Rodman say, "This money is for Mr. Perlmutter"?

A No, he didn't, sir.

Q Did Mr. Rodman say that he had to pay Mr. Perlmutter?

A No, he didn't, sir.

Q But you believe that the money was for Mr. Perlmutter?

A That is correct, sir.

Q Mr. Wymbs, are you familiar with a firm Dickinson, Rothbard?

A Yes, I am, sir.

Q What kind of firm is that?

A I don't think they are a firm at all, sir.

Q Then who is Dickinson,Rothbard?

A I don't think at this point they exist, sir.

Q Who were they or who was he in 1972 or '73?

A He?

Q Yes.

A I don't know any Mr. Dickinson Rothbard.

Q Then what is Dickinson,Rothbard?

A I believe it is a brokerage firm, sir.

Q Were they in business, to your knowledge, in 1972?

A Yes, they were, sir.

Q What about 1973?

A I don't know, sir.

Q Did you have any business dealings with them in 1972?

A I believe towards the end of '72 and the beginning of '73, I did, sir.

Q And did you have a broker at that business

establishment?

A A broker, no, sir.

Q Was there anyone there in particular that you dealt with?

A No, sir.

Q What was your relationship to them?

A Our relationship to them was, I was sent over there as a messenger mainly by Mr. Thomas Rodman and Mr. Kozak to deliver and pick up envelopes.

Q Are you sure it wasn't Mr. Bill Zammas -- withdrawn.

A Mainly Mr. Rodman, sir.

Q Did you ever steal any securities from Dickinson, Rothbard?

A No, I didn't, sir.

Q Did you ever tell anybody that you stole securities from Dickinson, Rothbard?

A No, I didn't, sir.

Q You are sure of that?

A Yes, sir.

Q Do you recall testifying before the Securities and Exchange Commission on March 18, 1975?

A No, sir.

Q Do you recall testifying before the U. S. Attorney's Office on March 18, 1975?

A Yes, I do, sir.

Q Was Mr. Lowe present at that time?

A Yes, he was, sir.

Q Was Mr. Shaeffer present at that time?

A Yes, sir.

Q At that time your wife and baby were there, right?

THE COURT: What do you mean by testifying before the U. S. Attorney's Office? I don't understand that term.

Q Were you asked to come down to the U. S. attorney's office to answer questions?

A Yes, I was, your Honor.

Q Were you given your rights?

A Yes, I was.

Q They told you that there was an investigation with regard to possible security violations, isn't that true?

A That is true.

Q And they told you that you had a right to counsel, isn't that true?

A That is true.

Q And they told you you had a right not to answer any questions, isn't that true?

A That is true.

Q And they told you had a right not to incriminate yourself, isn't that true?

A That is true.

Q And thereafter you were asked questions, is that correct?

A That is correct.

Q And those questions had to do with your participation and the participation of others in possible securities violations, is that true?

A They had to do with securities, yes, sir.

Q Were you questioned about your participation and the possible participation of others?

A Yes, sir, I was.

Q In security violations, is that correct?

A Sir, I do not -- about securities, I will say yes. About securities violation, I don't know what was in their --

Q Weren't you advised that they were going to question you about certain conduct and actions that might be violations of the securities law?

A No, sir.

Q Didn't they tell you that when they gave you your rights?

A They told me I would be asked questions about my actions in stocks. I said I would answer them truthfully, which I did, sir.

Q You were told that you were going to be asked questions about possible violations of law in the securities field, is that correct?

THE COURT: That question has been asked and answered.

Q Were you concerned about the fact that you were open to possible criminal prosecution?

A No, sir.

Q Thereafter, on February 24, 1972 --

MR. LOWE: I submit that could hardly be thereafter.

MR. BERGER: I'm sorry.

Q Do you recall that on February 24, 1975 --

A You are changing it from '72 to '75?

Q Yes, February 24, 1975, you spoke to Mr. Shaeffer of the Securities and Exchange Commission?

A Alone, sir?

Q By telephone.

A Possibly. I don't recall the exact conversation, sir.

Q Do you recall a telephone conversation with him?

A Not specifically, no, sir.

Q February 24, 1975 was the day befofe you appeared before Mr. Lowe and discussed Power Conversion and Value Line with him; do you recall that?

A Yes, sir, I do.

Q Do you recall a telephone conversation the day before you appeared before Mr. Lowe?

A I believe there was a phone conversation. To my knowledge, it was directly with Mr. Lowe's office.

Q Do you recall speaking to Mr. Shaeffer?

A No, sir.

Q Are you sure you didn't speak to Mr. Shaeffer on February 24, 1975?

A I can't swear to it, sir. I'm sure a call was made.

Q Do you recall Mr. Shaeffer saying to you that he would like you to appear in Mr. Lowe's office to discuss Power Conversion?

A Sir, I have just testified that I do not recall speaking with Mr. Shaeffer. Therefore, I can't recall what you just asked me.

Q Well, then, how did it come about that on February 25, 1975 you appeared before Mr. Lowe to discuss Power Conversion?

A I received a telephone call, either myself or my wife, to my knowledge, directly from the office of Mr. Peter Lowe advising me that he would like to come and speak with me based upon stocks, upon which I responded -- I think at the time I spoke with my wife about it and she asked me about and I said yes, I would like to come, and she would like to come with me, which we did.

Q I show you Defendant Rodman Exhibit 8 for identification and ask you if this helps refresh your recollection.

THE COURT: Approach the bench.

(At the side bar.)

THE COURT: We have been all over this yesterday. You have handed him the same exhibit.

MR. BERGER: Your Honor, I did not have it marked as an exhibit. I am now setting a predicate for a --

THE COURT: We have been over this yesterday.

MR. BERGER: I must seek the indulgence of the court as I intend to call an SEC attorney as a defense witness and without this predicate I will be unable to.

THE COURT: You can't call any witness to prove that this witness is not telling the truth on matters like that.

MR. BERGER: Your Honor, I can call this witness with regard to this exhibit.

THE COURT: You are testing the witness' memory.

MR. BERGER: I'm just trying to refresh his recollection as to a state of mind which is relevant and material in this case.

THE COURT: We have been over that yesterday. The record shows we have had this same discussion. You are trying to bring out that he feared

prosecution.

MR. BERGER: That's not the purpose of my question at all, your Honor.

THE COURT: What's the purpose of your question?

MR. BERGER: The purpose of my question is that he is nto consistent in his testimony. There are certain facts that are set forth in that 3500 material which are not the same as the facts he has now testified to and I want to show discrepancy.

THE COURT: What is that?

MR. BERGER: No. 1, he said he heard Rodman and Zammas discuss the necessity of making a payment before the publication will be made. This is different than his testimony before, which was that he heard conversations concerning payments for the Value Line article, but he never said before the publication would be made.

THE COURT: Yes, he did. His whole testimony was to that effect.

MR. BERGER: His testimony was there were continual conversations between Rodman and the people at Value Line as to when delivery was going to be made, and at the same time, the same time sequence, he was

discussing the payment of money.

I want to show that before publication and before delivery payment had been made, he said, and the following day he testified differently.

In addition to that, he never, at least the 3500 material does not indicate, that he ever mentioned the passing of the cash. He never mengioned Gennaro.

The ommissions in his statements to the SEC in February on the 24th, and to the U. S. attorney on the 25th, are relevant on the issue of whether the new testimony is connived.

THE COURT: What new testimony? His testimony on the stand here?

MR. BERGER: With regard to Gennaro, with regard to Rodman, with regard to the cash, with regard to Perlmutter.

I have a right to go into was he asked that and did he answer, did he tell the U. S. attorney about Perlmutter, did he tell the U. S. attorney about Rodman and the cash. None of this appears on the 3500 material.

MR. LOWE: I think you are free to ask him about that and I will just tell you the 3500 material I gave you consisted of notes made by Mr. Shaeffer and a

very quick little thign I wrote up for him to sign so I would have it to use if he ever changed his mind. Neither of those purports to be a verbatim transcript. I gave it to you anyway.

I'm quite sure that his testimony would be that he told us lots of things that are not written down here. I think you can ask him that.

MR. BERGER: When defense counsel is handed material purported to be 3500 material defense counsel has a right to rely that his 3500 material under the Act and --

THE COURT: He say it is.

MR. BERGER: -- and meets the requirements of 3500 material under the Act. And the primary requirement of 3500 material under the Act is that it is virtually a verbatim report of totally everything that the witness said.

If a report is not such a report, under 3500 it is not 3500 material.

MR. LOWE: Very well, Mr. Berger, I would like it back.

MR. BERGER: Take it back.

MR. LOWE: He shouldn't have it if --

MR. BERGER: I am saying, your Honor, when

that material is given to defense counsel as 3500 material we have a right to rely upon it as 3500 material.

THE COURT: It is. The government gave it to you and it says what it says. You can ask him if he also told the government thus and so. That's all right. You can ask him that: did you tell the goverment that you gave or somebody gave money, or whatever.

What I was trying to prevent is a repetition of your cross examination of yesterday.

MR. BERGER: I don't intend to do that and I intend to rely upon the fact that the 3500 material that I have been given meets the requirements of 3500. If it does not, then defense counsel has been misled, erroneously or otherwise we have been misled.

THE COURT: Let's proceed.

(In open court.)

BY MR. BERGER:

Q Does that refresh your recollection?

A Yes, it does, sir.

THE COURT: Refresh his recollection as to what?

MR. BERGER: As to whether he had a conver-

sation with Mr. Shaeffer.

A I had a conversation with a gentleman, either Mr. Shaeffer or Mr. Lowe. I do not know exactly which. That piece of paper states it was Mr. Shaeffer. I knew it was someone representing either the Office of the U. S. District Attorney or someone aligned with him. Obviously from that letter it was Mr. Shaeffer. At the time I was not extremely familiar with both of their names, who they were or what their positions were, sir.

Q And you had a telephone conversation with that individual, is that correct?

A Evidently I did, yes, sir.

Q And you told him that you overheard a conversation, discussion between Mr. Rodman and Mr. Zammas, concerning the necessity to pay money before the article would be published. Do you recall saying that to Mr. Shaeffer or whoever you spoke to on that day?

A Yes, I did.

Q Did you tell Mr. Shaeffer that you saw Mr. Rodman turn over an envelope of $5000 that day, in that phone conversation?

A No, I didn't, sir.

Q Didn't you think that was important?

A Sir, I think a lot of things are important. Therefore I do not always comport with them.

Q The fact that you actually saw the transfer of cash, didn't you believe that was more important than this alleged conversation you overheard?

A Sir, I was asked a specific question, I gave a specific answer to the man on the phone. If you wish me to go into all the things I know about, other transactions, I would be glad to because I think they are more important --

MR. ENTIN: I object to that kind of answer.

THE COURT: Yes.

THE WITNESS: I apologize.

MR. ENTIN: Your Honor, I would like to reserve a motion for the first recess.

Q Weren't you told that when you met with Mr. Lowe you would not be questioned beyond Power Conversion and Value Line? Did Mr. Shaeffer tell you that?

A I believe that I was told that that would be the main scope of the conversation, yes.

Q Were you told for your benefit that it would be limited to that?

A I believe, to the best of my recollection, I was told that the meeting was going to be specifically with Power Conversion and the Value Line article.

Q When you met with Mr. Lowe on the 25th of February, did you write a statement and sign it?

A At one of the meetings with Mr. Lowe I did write a statement and sign it, yes, sir. Whether it was this one or not, I don't recall.

Q Was that your statement or was it dictated to you?

A It was a statement that I made and it was written down. I don't believe I personally wrote it. I would have to see it in order to see, if you would like to show it to me.

(Document handed to witness.)

A Thank you.

Q May I have it?

A As soon as I'm finished with it.

Q Can you identify your handwriting?

A I can't until I look at it a little closer,

sir.

This is not my handwriting, sir, except for the signature.

Q Thank you.

Now, on the date that you signed this statement did you tell Mr. Lowe that you saw cash pass from Mr. Rodman to Miss Gennaro?

A No, I did not.

Q Did you tell Mr. Lowe that you knew that that cash was for Mr. Perlmutter?

A No, I did not.

Q Did you tell Mr. Lowe that Miss Gennaro was at the meeting?

A Which meeting, sir?

Q The one in which cash passed.

A No, sir, because it was not brought up.

Q Weren't you being questioned about Power Conversion and Value Line?

A Yes, I was.

Q Didn't Mr. Lowe go into that with you in detail, the relationship, whether there was a payoff?

A Yes, he did.

Q But he didn't ask you the specific question, is that correct?

A That's correct.

Q And you didn't feel that the passing of cash with the statement that this is for the payoff was important enough to volunteer to Mr. Lowe?

A I answered the question you asked me, sir.

MR. BERGER: I have no further questions, your Honor.

THE COURT: Anything further?

MR. BERGER: Yes, your Honor.

THE COURT: Mr. Entin, you cross examined?

MR. ENTIN: Yes, your Honor.

REDIRECT EXAMINATION

BY MR. LOWE:

Q Mr. Wymbs, I am showing you Government's Exhibit 3512A for identification. Is that a copy of the document Mr. Berger just showed you?

A Yes, it is.

Q Whose handwriting is that?

A Not mine, sir.

Q Was that document written in your presence?

A Yes, sir.

Q Who wrote it?

A I believe you wrote it, sir.

Q And after it was written what were you asked

to do?

A I was asked to read it.

Q And then what were you asked to do?

A I was asked if it was truthful and honest in all ways.

Q Then what were you asked to do?

A I was asked to sign it?

Q Did you?

A Yes, sir.

Q And that occurred on February 25th of this year, is that right?

A February 25th of 1975, yes, sir.

Q In my office?

A Yes, sir.

Q At what point of the meeting did it happen?

A I believe it happened at the end of the meeting, sir.

Q How long did the meeting last, approximately?

A I recall it was not long because the baby was screaming and I would say it was like a 15-, 20-minute meeting at the most, sir.

Q Was everything you said at the meeting incorporated in that document?

A I would say the majority of it, sir. I

couldn't say all of it.

Q How long is that document?

A That document is approximately half a page long.

Q In 15 minutes did you say more than a half a page?

MR. BERGER: Objection, your Honor.

MR. ENTIN: I join in that.

MR. BERGER: He is now trying to discredit his own witness.

MR. ENTIN: Leading, your Honor.

THE COURT: Overruled.

A May I have the question again, please?

Q During the 15 minutes you claim the meeting was did you say more than a half a page worth?

A I don't believe I said much more than that, sir. I believe I said some other lthings, but I don't believe directly to this. I don't recall exactly what the entire essence of the conversation was. I believe I did say other things, yes, sir.

MR. ENTIN: Objection, your Honor. He is still volunteering answers.

THE WITNESS: I'm trying to recall, your Honor.

THE COURT: Are you saying you do not recall whether you said more?

THE WITNESS: I believe I said more, your Honor. In 15 minutes, yes, sir, I did say more.

MR. BERGER: Your Honor, the witness has now changed his testimony three times in the last two minutes.

THE COURT: That's for the jury to determine whether he has changed his testimony.

MR. BERGER: Yes, it is, your Honor.

BY MR. LOWE:

Q Mr. Wymbs, during the course of your testimony over the last day and a half you have testified to a number of meetings, conversations, what have you.

Do you have any clear recollection of the specific dates of any of those meetings?

A No, I do not, your Honor, outside of what I have written -- outside of what I have written here, the dates I was given by the other counselor, and the ones I just read here on a piece of paper saying February 25th.

Q How about your meetings with Mr. Rodman? Do you have any clear recollection of the exact dates on which those took place?

A Not the exact date, no, sir.

Q How about your meetings with Zammas? Do you have any clear recollection of the exact dates on which those took place?

A The only one -- the only way I can answer that is that during a period of two weeks, the days that I was at C. I. Oren or at the apartment, the exact dates I would have to go to a calendar. I didn't memorize dates and I didn't come prepared to give you exact dates.

Q During your cross examination by Mr. Berger, you told Mr. Berger that you were not a sophisticated investor. Back in 1972 did you think of yourself as a sophisticated investor?

A Yes, I did.

Q Has that opinion of yours changed since then?

MR. ENTIN: Objection.

MR. BERGER: Objection, your Honor.

MR. ENTIN: It is irrelevant whether his opinion of himself has changed.

THE COURT: Overruled.

A Since then I have changed considerably my evaluation of myself as an investor from that of thinking of a sophisticated, high-flying someone who knew what

he was doing, to someone who was being used and manipulated by people.

MR. BERGER: Objection. I move to strike.

THE COURT: The latter part is stricken, that he believes he is being used and manipulated.

MR. ENTIN: Your Honor, I reserve a right to make a motion as to this to a later time.

THE COURT: Yes.

BY MR. LOWE:

Q During the course of your cross examination you testified to receiving something in the mail which had a list of names and things like that on it. Was that a subpoena?

A I think it was. I do not recall exactly. I believe it was, your Honor -- counselor. I believe it was a subpoena to come to some place and tell what I knew about a list of items, names.

Q Mr. Berger asked you some questions to the effect that you were taking Valium yesterday?

A Yes, sir.

Q Did the Valium that you took affect you in any way as to affect your ability to give testimony?

MR. ENTIN: Objection. It calls for

a conclusion this witness is not capable to make.

MR. BERGER: Objection.

THE COURT: Overruled.

THE WITNESS: Which means I may answer?

THE COURT: Yes.

A To my knowledge, it did not, sir.

Q Did you take that Valium for any reason other than your back problem?

A No, sir.

Q You testified that during the week ending October 30, 1972 you were at the apartment at 35th and Lexington Avenue and were present during what you call an argument between Mr. Zammas and Mr. Rodman.

Do you recall Mr. Berger asking you about that on cross examination?

A Yes, I do, sir.

Q What were Mr. Rodman and Mr. Zammas saying to each other at that time?

A Mr. Rodman was yelling and getting quite upset with Mr. Rodman for making trade on stocks he had not authorized.

Q Excuse me, Mr. Wymbs --

MR. LOWE: Could we have the answer read back?

MR. ENTIN: I object.

A What was the question?

MR. LOWE: Your Honor, I think he said the same person was arguing with himself.

A I'm sorry. Mr. Zammas was arguing with Mr. Rodman over trades that Mr. Rodman had made and things Mr. Rodman had done without Mr. Zammas' authorization.

Q What kind of trades were they talking about?

A They were talking trades in stocks.

Q What stocks?

MR. ENTIN: Objection.

MR. BERGER: Objection, your Honor.

MR. ENTIN: Your Honor, he is trying to lead an answer out of this witness. This is the third time he has asked the question and each time he goes a little further.

THE COURT: Overruled.

A One, he had --

Q What stocks?

A Okay. Power Conversion --

MR. BERGER: Objection, your Honor. It is obvious Mr. Lowe is more than leading the witness at this time.

THE COURT: By asking him what stock?

Overruled.

MR. BERGER: The way he asked, your Honor --

THE COURT: Overruled.

A Power Conversion. I believe Indecon was mentioned.

MR. ENTIN: Objection, your Honor.

MR. BERGER: Objection.

THE COURT: Overruled.

MR. BERGER: May we approach --

THE COURT: Overruled.

A Those are the two I recall, sir. This is October of -- excuse me. October of '75? Would you give me that again?

Q You testified --

A Of '73 or --

Q You testified on your cross examination by Mr. Berger that you were present at an argument between Mr. Rodman and Mr. Zammas during the week of October 13, 1972.

A Okay. That meeeting was mainly with Power Conversion on -- it was specifically with trades that Mr. Rodman had made for Mr. Zammas' account without his authorization.

I withdraw the Indecon. That was not at

that time, sir.

Q Mr. Wymbs, you testified during your cross examination that when you saw this cash change hands in the apartment you understood it was for Mr. Perlmutter?

A Yes, sir, to be given to somebody.

Q Did anyone tell you who Mr. Perlmutter was?

A No, sir. It was a broker, I was led to believe by Miss Gennaro. They didn't tell me specifically who he was, no, sir.

Q Did anyone tell you anything about who Mr. Perlmutter was? Can you answer that yes or no.

A Yes.

Q Who told you?

A Miss Gennaro told me he was the messenger.

Q Mr. Entin asked you on his cross examination whether or not Mr. Zammas lost any money on Power Conversion, and I believe your testimony was that Mr. Zammas told you indeed he did, is that right?

A Yes.

Q Isn't it a fact, Mr. Wymbs, that a lot of people lost a lot of money?

MR. ENTIN: Objection, your Honor.

THE COURT: Yes. He wouldn't know that.

If he knows from his own knowledge. A lot of people. What does that mean, Mr. Lowe?

MR. LOWE: I will reframe the question, your Honor.

MR. BERGER: May it please the court, under Section 1341 of Title 18, Section 77(q)(b), Section 77(q)(a), it is immaterial and irrelevant whether anybody made, lost or even bought or sold Power Conversion. It is totally irrelevant to this case.

MR. LOWE: Your Honor, this was brought up on cross examination. It was brought up specifically by Mr. Zammas' counsel to establish that Mr. Zammas lost money. I think I am entitled to inquire, once the subject has brought up, into the somewhat broader subject of who else.

THE COURT: Yes.

MR. BERGER: May it please the court --

THE COURT: Overruled, Mr. Berger.

BY MR. LOWE:

Q Mr. Wumbs, do you know of any other people besides Mr. Zammas who lost money on Power Conversion stock?

A Yes.

Q How many other people do you know?

MR. BERGER: Objection, your Honor. No proper predicate.

THE COURT: Ask him to name them. He said he knew other people. Ask him who they are.

Q Who are these people?

A Robert J. Wymbs, me, for one. I can't give the names of the other people that I know personally, of my own nature, but my brokers' clients --

MR. ENTIN: Your Honor, I am going to object. What anybody told him about would be clear hearsay and inadmissible.

THE COURT: Yes.

A I'm sorry. I know --

MR. BERGER: Objection, your Honor. He is not responding to the question now.

THE WITNESS: Would you ask the question again?

Q Do you know the names of any persons who to your personal knowledge lost money on Power Conversion stock?

A Yes, I do.

Q Tell us who they are.

MR. ENTIN: Your Honor, I object. I made an indication that if somebody else told him outside the presence of Zammas --

THE COURT: That is why the question is worded as it is. Does he know of his own personal knowledge.

Overruled.

A Yes. I was in the offices of Equitable Equities in the presence of the two principals of the office when they told me --

MR. ENTIN: Objection,your Honor.

THE COURT: Don't tell us what anybody told you who is not here to be cross-examined by defense counsel.

A (continuing) -- the names of the two people were --

MR. BERGER: Objection, your Honor.

THE WITNESS: I am answering the question --

THE COURT: Just a minute. The question to you is whether you know of your own knowledge that these people lost money.

THE WITNESS: Yes.

THE COURT: You can't tell us that they told you so. That would be hearsay because they are not here to be cross-examined as to the truthfulness of their

statement.

Do you understand?

THE WITNESS: Yes, Madam.

THE COURT: That is hearsay. There are exceptions to the hearsay rule, but that is not one of them.

THE WITNESS: Mr. Henry Goldfarb --

MR. ENTIN: Your Honor, I am going to ask for instruction of the jury at this time.

MR. BERGER: Objection.

THE COURT: Is this something you know of your own knowledge or are you relying on something he told you?

THE WITNESS: I know of my own knowledge.

MR. ENTIN: Will your Honor inquire --

THE COURT: How do you know of your own knowledge?

THE WITNESS: I saw the buy ticket come in over the machine. I saw it verified on the Nasdec machine as it came in.

MR. ENTIN: Your Honor, may we approach the side bar, please.

THE COURT: No. You are talking about matters you saw where? Where did you see these matters?

THE WITNESS: I saw these matters sitting in the

office of C.I. Oren, watching the Nasdec machine, as the orders came in to buy.

MR.ENTIN: Your Honor, I can't cross-examine a machine.

THE COURT: Yes. You will have to move on, Mr. Lowe. He apparently --

MR. LOWE: I agree, your Honor.

MR. ENTIN: Your Honor, I would like an instruction to the jury.

THE COURT: I have already explained that to the jury when I told the witness he can't tell us what somebody told him who is not here to be cross-examined. He has now indicated he has no personal knowledge.

BY MR. LOWE:

Q Mr. Wymbs, during his cross-examination Mr. Berger asked you about a stock known as Tom Ward, is that right?

A Yes.

MR. ENTIN: Objection.

MR. BERGER: Objection, your Honor.

MR. ENTIN: May I approach the side bar?

(At the side bar.)

MR. ENTIN: Your Honor, we received prior to this trial an indication from Mr. Lowe, by letter, that

my client, Mr.Zammas -- I don't know about Mr. Rodman -- is under investigation for alleged manipulative dealings for Tom Ward, and the target of investigation for alleged dealings with Indecon. As such I have avoided mentioning either of those names in the course of the trial to the extent I had 3500 material on Mrs. Aiken that indicated she committed perjury with regard to those two stocks --

MR. LOWE: It didn't indicate that. That is not true.

THE COURT: Please don't interrupt.

MR. ENTIN: A false statement of fact or was involved in the deal. I never went near it. That is the important point. To go into this now would be to raise an issue not spposed to be raised in this trial which I have scrupulously avoided to raise, which would prejudice my client completely, and I would have to ask for severance if this is gone into, indicating antagonistic defenses. It is improper. If he opens something by cross-examination --

MR. BERGER: May I be heard, your Honor?

THE COURT: Yes.

MR. BERGER: The only question I asked this witness with regard to TomWard or Indecon was, was he involved in any illegal activity concerning the stocks.

MR. LOWE: You used the specific word, was he involved in the manipulation and he said no. It is my position he lied.

MR. BERGER: He said no --

THE COURT: Just a minute. Go ahead.

MR. BERGER: Whether he was involved in that manipulation, illegal activity, to show, to bring out I knew he was under investigation and it was one of his motives testifying for the Government, and his answer was no, I proceeded no further.

That was the limit of it. I didn't go into the type --

THE COURT: Yes, I think you should not go into it further because Mr. Berger has a right to ask the witness about other misconduct. What you are doing is going beyond that.

MR. LOWE: Your Honor, Mr. Berger asked that for the purpose of placing in the jury's mind the idea that something was going on, and while the jury is perfectly right to get that idea, I think it is grossly improper to allow the jury to have the idea that Mr. Wymbs may be under investigation in Tom Ward for manipulation. I think it is improper to let this jury think Mr. Wymbs didn't participate in the manipulation because in fact he did,

and in fact he did it with Mr. Rodman and Mr.Zammas and I think I am entitled to prove that in light of the question asked by Mr.Berger in his cross-examination.

MR. BERGER: Absolutely not.

THE COURT: The objection is sustained.

(In open court.)

BY MR. LOWE:

Q Mr. Wymbs, you testified in response to questions by Mr. Berger that you didn't come to the United States Attorney's office worrying about whether you were going to be prosecuted. Was that your testimony on your cross-examination?

A Yes, it was.

Q Was that the truth?

A Not completely, sir.

MR. BERGER: Your Honor, objection. He is now discrediting his own witness.

THE COURT: He is permitted to do that under the new rules. He can impeach the credibility of his own witness.

MR. BERGER: Yes, your Honor.

Q Were you in fact worried about being prosecuted?

A Yes, sir.

Q Are you still worried about being prosecuted?

A To some degree, yes, sir.

Q Do you have reason to be worried about being prosecuted?

MR. ENTIN: Objection, your Honor.

A Yes, sir.

MR. ENTIN: Ye is trying to bring in the back door what your Honor didn't let him --

THE COURT: Overruled.

MR. LOWE: I missed the answer.

THE COURT: Will you read it?

(Answer read.)

Q Have you said anything on the witness stand in this trial in order to curry favor with the United States Attorney?

A No, sir, outside of one thing I said that I didn't understand, the word "warehousing" and --

MR.ENTIN: Your Honor, I really wish this Court would instruct the witness to answer --

THE COURT: He is answering the question. He is telling us.

A When the word was used did I ever warehouse stock, I had never heard the word warehousing it, but thinking about it, the word is yes, I used the work park it or put some place, and in that way I misled the jury,

and the people.

Q Have you made any statement during the course of this trial, which is not true?

MR. BERGER: Objection, your Honor. Your Honor, I don't want to make a speaking objection. May I approach the side bar?

THE COURT: Yes.

(At the side bar.)

MR. BERGER: Your Honor, the witness is under oath. It is assumed that he knows what an oath is. It is not proper to question him whether he has told the truth or all his testimony has been true. That is for the jury to determine. It is assumed that he will be telling the truth or should be telling the truth because he is under oath. AllMr. Lowe now is doing is adding cumulative, cumulative evidence to something which is assumed, which should be.

MR. ENTIN: Your Honor, if Mr. Lowe is indicating that he feels this witness committed perjury yesterday and I am willing to bet he did, I would move to strike the testimony with instruction to disregard everything he said.

MR. BERGER: I join in that.

THE COURT: I gather what you are trying to have him say was as to the answer yesterday as to Tom Ward,

is that right?

MR. LOWE: I don't know, your Honor. It may be the term manipulation he might have felt was something he didn't participate in on the grounds he didn't understand the word, but what I am trying to establish is, if he did, I would like him to say so now, because I think that in connection with collateral matters to which he was examined on cross-examination, that he was not entirely candid. I think it is not only to the benefit of the Government, but I think it is the obligation of the Government having called a witness who says something at any time we have reason to believe is not true, to point it out and if necessary to point it out by cross-examination of the witness.

I don't think it is proper to put myself in a position of having called this man as a witness to have heard him say things that I am not satisfied are candid, and to let it pass.

THE COURT: Yes. Here is what I think: I think the prior ruling I made with respect to your asking this witness a question about Tomward would have to be changed because, as I have just ruled, you have a right to impeach the credibility of your own witness and if you

know that his answer to the question was incorrect, you can ask him about it.

MR. ENTIN: Would you limit it as to only hiave involvement with Tom Ward and not the involvement of the defendants? He doesn't have to involve the defendants to impeach the credibility of the witness.

Secondly, your Honor, I think if Mr. Lowe feels candidly the witness does not understand the meaning of manipulation, or is not sure, there is a court-appointed attorney here and the man is getting into an area where he may be prosecuted for manipulative action, he can confer with counsel --

THE COURT: He was advised yesterday of his constitutional rights.

MR. ENTIN: I am saying if Mr. Lowe feels if he doesn't understand the meaning of manipulation, he should have an opportunity to discuss it with his counsel as to what it is so he can knowingly --

MR. BERGER: I think he testified yesterday that he didn't know what manipulation was.

MR. LOWE: No. He said he didn't participate in one.

MR. ENTIN: You just said he didn't know --

MR. LOWE: I said he could avoid a yes answer

by claiming he didn't know. He has testified what he did under oath in a grand jury.

THE COURT: Ask him that question, what he did in connection with the Tom Ward stock.

MR. BERGER: I don't object to that, your Honor, as long as the witness is cautioned not to mention any other name of any defendant because that is not necessary to discredit this witness.

THE COURT: Why should he be so limited?

MR. BERGER: It would then be prejudicing --

MR. ENTIN: Your Honor, I --

THE COURT: You are talking while Mr.Berger is talking. The reporter can't get it.

MR. BERGER: My cross-examination was proper to show he was under fear of prosecution while he was testifying yesterday, when he testified before the grand jury, when he testified before the U. S. Attorney, I was trying to show the state of his mind. The only question I asked him was, did you manipulate the stock, did you participate in the manipulation of the stock, and he said no, and I went no further than that. I didn't bring out names, did you manipulate with Mr. Rodman, Mr.Zammas, or Mr. Cohen or Mr.Schwartz. Just his state of mind. If the answer he

gave was such, that it disturbs the Government because of possible future prosecution, I can understand the Government wating to straighten out the record, but he shouldn't go beyond the way I limited myself because of the prejudicial effect it would have,by far outweighing the probative value in this case.

It may have great probative value in some other case, but not in this case and the prejudice in this case would be overwhelming.

THE COURT: Do you want to say something, Mr. Lowe?

MR. LOWE: Yes,your Honor. There is no doubt if I ask him the question what did he do in connection with Tom Ward stock that he is going to say that he participated in the creation of an artificial market and did so through Mr. Rodman and Mr.Zammas, and that he did so at their direction and request, and that he among other things placed purchase orders for that stock which he had no money to pay for, which they knew he had no money to pay for, but they nevertheless asked him to do.

He will testify that he did all his trading in that stock in a false name, which he got because Mr. Rodman told him he should because of their involvement in Power Conversion they shouldn't deal in their own names any more,

because they would be known to be bad people.

Mr. Berger asked that question, your Honor. Mr.Berger asked that question to make the jury think, quite correctly, that Mr. Wymbs is not a very nice man. He may want the jury to think Mr.Wymbs was involved in a manipulative fraudulent activity, casting therefore a lot of doubt on the integrity of Mr. Wymbs.

I do not think Mr. Berger should be allowed to do that and then claim that it is unfair to his client or allow the whole truth to come out.

Mr.Berger, I think, deliberately tried to bring out half truth, and is trying to prevent the Government from bringing out the whole truth.

THE COURT: The Government could prove that matter --

MR. BERGER: The Government can say, did you manipulate that stock with others, not naming the others.

THE COURT: The Government could prove that as a subsequent similar act, couldn't it?

MR. BERGER: No, it is not a subsequent similar act at all. If they intend to prove it as such, I have very serious doubt if they would want to do it on the basis of double jeopardy.

MR. ENTIN: Mr.Zammas,your Honor, has done

nothing in this particular instance to bring forth anything of that. We have avoided that. It would be extremely prejudicial to Mr. Zammas to have to possibly defend a second case --

THE COURT: Mr. Lowe, dovou want to bring this out as a subsequent similar act?

MR. LOWE: No, your Honor. Just to elucidate, clarify the cross-examination which is the purpose of redirect.

THE COURT: Just ask him to tell us about his involvement in Tom Ward.

MR. LOWE: In that case,your Honor, I have to have a brief recess because I don't know -- unless I instruct him --

MR. ENTIN: I have no objection.

MR. BERGER: I have no objection.

THE COURT: All right, we will take a recess.

MR. ENTIN: Thank you, your Honor.

(In open court.)

THE COURT: At this time we will take a ten-minute recess. The jury is excused.

(Jury left the courtroom.)

(Recess.)

(In open court; jury absent.)

MR. ENTIN: Your Honor, before the jury comes back in, I have reserved two motions.

I would like to move for a mistrial regarding Number 1, to Mr. Wymbs' unsolicited statement about other transactions that the defendants were involved in.

THE COURT: I don't believe he mentioned defendants.

That motion is denied.

MR.ENTIN: The second motion, your Honor, is with regard to his again unsolicited statement that he had been used and manipulated by the defendants.

End 2B

THE COURT: He didn't say bh the defendants. Motion denied.

MR. LOWE: Your Honor, could I ask your Honor to attend to page 509 of the transcript of Mr. Wymbs' cross-examination from yesterday.

THE COURT: Yes, I have it. Which line?

MR. LOWE: Your Honor, starting from line 3 Mr.Berger was asking him about a stock called Indecon, and a series of questions that thereafter follow I think is sufficient to allow the Government at this time to ask him about Indecon and who he was dealing with, specifically the question he was asked: "Did you take the stock into your name for purposes of other than holding it and owning it for your own account?

"A Yes."

I would like to develop exactly what he did in that connection.

THE COURT: You would like to ask this witness what he, the witness, did in connection with Indecon?

MR. LOWE: Yes, your Honor, and specifically in connection with taking stock into his name for purposes other than holding it and owning it for his own account.

THE COURT: His answer would probably bring in

defendants?

MR. LOWE: Yes, your Honor, of necessity.

THE WITNESS: Do you want me to leave?

MR. LOWE: Perhaps the witness should leave the room.

THE COURT: All right.

(Witness left the courtroom.)

MR. LOWE: Your Honor, the facts are that Mr. Wymbs having lost whatever money he had in Power Conversion, continued dealing with the defendants in what I guess can best be termed the vain hope of getting his money back.

He began trading in the name of Thomas Donnelly. It was a friend of his whose name he used as a nominee. He introduced himself to people as Thomas Donnelly, and generally pretended to be Thomas Donnelly, so no one would know a person named Wymbs was involved in these stocks.

He would place orders at the request of the defendants to purchase Indecon and subsequently Tom Ward which, as the result of a swap transaction, are almost one and the same stock.

He placed oders knowing that he didn't have any money to pay for them. The defendants asked him to place those orders knowing he didn't have any money to pay for

them.

They told him before the payment date came they would put it somewhere else. In effect, what was going on in that stock, your Honor, was to create an artificial impression that there was actual buying and selling of that stock in an active market at a particular price when, in fact, there was no real buying and selling --

THE COURT: Yes, I understand. The problem is as suggested by defense counsel that this is prejudicial to the defendants because it would suggest to the jury that they have been involved in other crimes not charged in this indictment.

And, I ask you, do you wish to prove this as a subsequent similar act and you said no. I don't understand your reasoning then as to how this evidence to the participation of these defendants on that transaction can be brought in.

MR. LOWE: I don't mean to suggest, your Honor, I could not argue it was a subsequent similar act and prove it, my contention is because Mr. Berger raised the subject on cross-examination, asked Mr. Wymbs about it in some detail, although not great detail, obviously because what Mr.Berger wants to do is to leave the jury with the impression that Mr. Wymbs had done something wrong,

which is correct; the Government's analysis is Mr. Wymbs did do something wrong.

I think, however, having brought up the subject regardless whether the Government can prove these matters as part of the Government's direct case, the Government is now entitled to explore fully matters gone into on cross-examination by defense counsel, whether or not we could have proved it independently of that fact.

That is why I urge upon your Honor the Government's offer to elicit from Mr. Wymbs a full explanation of matters only partially gotten from him by defense counsel.

THE COURT: There are limits to that, especially when matters sought to be brought out would be prejudicial to the defendants on trial. Unless you have some theory on which prejudicial matter can come in, either the subsequent similar act or as a part of a plan in this case or some part of legal theory.

MR. LOWE: Your Honor, I would argue it is a subsequent similar act, namely an act of fraud in the stock market. In addition, it also seems to me to go to the question of whether or not both Mr. Zammas and Mr. Rodman were dealers in stock at a time sufficiently close in time

to the time they paid Mr. Aiken the money to bring them within the definition of dealers in Section 77QB.

THE COURT: As to the second part of that, there has been a question raised by the defendants, if I understand it correctly, as to whether they are properly characterized as dealers within the meaning of Section 77Q.

If you are offering it for that purpose, then it can come in, to show that these men were dealers as opposed to what they claim, being public relations people. At least as to Mr.Zammas, are you claiming Mr. Zammas was a public relations man and not a dealer?

MR. ENTIN: Your Honor is right to a large degree. It is based on definition of dealers in the statute. The question here is whether Mr. Zammas was a dealer in September of 1972, and not a question whether he was a dealer in October of 1972. In other words, he may very well not have been a dealer in September, but could have become by virtue --

THE COURT: That would be evidence which the jury might infer, that he was a dealer a month before.

MR. ENTIN: Your Honor, it is also a different statute Mr. Lowe is talking about. In this particular case we are being accused of violation of the anti-touting statute. The Indecon and Tom Ward situation

deals with manipulative practices in the stock market and not the anti-touting statement.

It cannot be construed to be a subsequent similar --

THE COURT: It is a similar act if they are stock fraud. In that sense they are similar.

MR. ENTIN: Your Honor, with regard to this point, defendant Zammas nor his counsel has raised the question of Indecon or Tom Ward. We are being prejudiced, it appears at this point, because of something Mr. Berger raised which may or may not have affected his particular client.

I indicated at the side bar we had filed a motion based upon antagonistic defenses to begin with, and it becomes clear the joinder would work to be to our interest. We refused to bring it up and if your Honor wants to allow this kid of question to come in vis-a-vis Mr. Rodman, Mr.Zammas is entitled to immediate severance, and I would ask if the Court rules in that particular regard, that Mr. Lowe can't explore this through no fault of Mr. Zammas or his counsel, Mr. Zammas should be severed, not to be prejudiced by something Mr. Berger did with regard to Mr. Rodman.

THE COURT: That is a different point than

that raised by the Government, that is, the Government wants to show that Mr.Zammas, your client was a dealer in September of 1972 and he can show that or put in evidence from which the jury might infer that.

It is different from, therefore, your claim that this was something done by Mr. Berger.

MR. BERGER: May it please the Court, the statute says dealer in the security described. A person can be a dealer in many different stocks. The question is, was he a dealer in Power Conversion stock because if the individual were a dealet, let's say, in Indecon stock and paid the gratuity with regard to a stock that he was not a dealer, I don't think it would be relevant, but I think that the real problem, your Honor, is that the witness, according to Mr. Lowe, lied on the witness stand. If he had not lied on the witness stand --

THE COURT: That is as to Jack Ward, isn't that right?

MR. BERGER: No, as to the entire --

THE COURT: Just a minute. We at the side bar had a conference with regard to Jack Ward. The Government pointed out the witness lied as to that question. We are now talking about Indecon.

MR. BERGER: You can ask Mr. Lowe.

MR. LOWE: Yes, your Honor --

THE COURT: All right, it is clear.

MR. BERGER: Now, because of that lie I was forced to go one step beyond saying did you manipulate a stock and I had to name the stock, because I thought perhaps he didn't recall. Because of his dishonesty on the witness stand, I don't see why my client or Mr.Zammas snould be prejudiced because that witness lied and now the Government has to go ahead and rehabilitate the witness.

That is all Mr. Lowe wants to do. That witness can be rehabilitated, he can admit his lie, without naming Mr. Zammas or Mr. Rodman. That was the whole purpose when Mr. Lowe came up. He said to the Court "My witness lied."

He can rehabilitate him without prejudicing the trial. The probative value is not there.

THE COURT: All right, Mr. Berger, I am persuaded.

Mr. Lowe, you examine the witness as previously indicated at the side bar, with respect to his participation in Jack Ward and Indecon. You are instructed to that effect while we are bringing in the jury.

MR. LOWE: Yes, your Honor. Thank you.

(Jury present.)

R O B E R T J. W Y M B S resumed.

THE COURT: You may proceed, Mr. Lowe.

MR. LOWE: Thank you, your Honor.

BY MR. LOWE:

Q Mr. Wymbs, during your cross-examination yesterday were you asked the following questions and did you give the following answers, an- I am referring to page 508 of the transcript of this trial. Question by Mr.Berger.

"Q Did he ask you about a stock called Tom Ward, is that correct?

"A Yes, he did.

"Q Have you been involved in any criminal activity with regard to a stockTom Ward?"

There was an objection.

"Q Did you manipulate that stock?

"A No."

Were you asked those questions and did you give those answers yesterday?

A Yes, w did.

Q Did you put in purchase orders at various brokerage firms for purchases of Tom Ward stock at a time when you didn't have any money to pay for the purchases?

A Yes.

Q And was the purpose of your doing that to main-

tain an artifical market in that stock?

A Yes.

Q Did you manipulate that stock?

A Myself personally?

Q Did you manipulate that stock by doing what you just said you did?

A It that is what manipulating is, then I did, yes.

Q And that was fraudulent, was it not?

A Fraudulent, sir?

Q Did you tell the broker you ordered the stock from you didn't have the money to pay for it?

A Yes, sir.

Q When?

A No, I am sorry, I didn't say I didn't have the money. I expected to have the money but I didn't have it at the time I placed the order.

Q And you didn't get it, did you?

A Allthe time, no, sir. Sometimes I did.

MR. BERGER: May I approach the side bar, your Honor?

THE COURT: Yes.

(At the side bar.)

MR. BERGER: Just for the purpose of protecting the witness, I think that perhaps he better be advised of the fact that he has a court-appointed counsel and he may be getting into a dangerous area.

MR. ENTIN: He is admitting to perjury.

MR. LOWE: He has been advised a million times. If you don't want the answers --

MR. BERGER: I don't care.

THE COURT: He has his lawyer sitting here throughout this and he is an experienced lawyer.

(In open court.)

Q Mr. Wymbs, and I now refer to page 509 of the transcript in this trial, were you asked these questions yesterday and did you give these answers when questioned by Mr.Berger.

"Q Did he" -- meaning myself -- "ask you about a stock called Indecon?

"A Yes, he did.

"Q Did you manipulate that stock?

"A No, I didn't, sir."

Were you asked those questions and did you give those answers?

A Yes, I did.

Q Is it not a fact, Mr. Wymbs, that just as the

Tom Ward case, you also placed similar orders for Indecon stock, did you not?

A Yes, I did.

Q Therefore, you did participate in the manipulation of Indecon stock as well as Tom Ward, did you not?

A Participate in, yes.

Q Further down the same page were you asked this question and did you give this answer:

"Q Did you warehouse any of that stock" -- referring to Indecon.

"A Warehouse any of that stock? You mean putting it into a warehouse? Would you define the term, sir? I am a businessman. I indicate forms and things of this nature."

Did you give that answer?

A Yes, I did.

Q Did you understand the meaning of the question when it was asked?

A Yes, I did, I believe. I believe warehousing if it means the same as storing or putting away or something, a stock, warehousing it -- I am trying to think of the exact word -- hold it for somebody.

If warehousing meant holding stock for somebody else until they could take it back from me, I did do

that.

Q And didn't you understand that that was the question you were asked yesterday?

A Yes, sir.

Q When it was asked?

A Yes,sir, I realized it after it was asked, yes, sir.

Q And you did do that, did you not?

A Yes, I did.

Q And those were among the things, were they not, that you were concerned about whether or not you would be prosecuted, isn't that true?

A That is true.

Q One final question, Mr. Wymbs. Yesterday Mr. Berger asked you whether you were antagonistic toward Mr. Rodman or whether you didn't like Mr. Rodman or something of that nature. As I recall it, your answer was that you did not have any antagonism to Mr. Rodman. Was that a truthful answer when you gave it?

A I have no personal antagonism, but for what he did for me I have very great disdain for the person and I'm very upset with him, yes.

MR. LOWE: I have no further questions.

THE COURT: Anything further, Mr. Berger?

MR. BERGER: No, your Honor.

THE COURT: Anything further, Mr. Entin.

MR. ENTIN: No, your Honor.

THE COURT: Thank you. You may come down.

(Witness excused.)

THE COURT: Next witness.

MR. LOWE: The government calls Irving Orenstein.

I R V I N G O R E N S T E I N, called as a witness by the government being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LOWE:

Q Mr. Orenstein, what was your business during 1972?

A I was a broker, brokerage business.

Q What was the name of the business with which you were associated?

A C. I. Oren & Company.

Q What was your relationship to that company?

A I was the president of that company.

Q Did you also own it?

A Yes, I did.

Q In your connection with C. I. Oren did you participate in a public offering of a stock known as Power Conversion, Inc.?

A I did.

Q With whom did you deal in connection with that public offering?

A Who introduced me to the offer?

Q Yes.

A Tom Zammas.

Q Do you see Mr. Zammas in the courtroom today?

A Yes, I do.

MR. ENTIN: We concede identity.

Q Will you tell the court and jury specifically what you did at your firm in connection with the original public offering of Power Conversion, Inc. stock.

A We took in 20,000 shares of the selling group and made a distribution to the various customers.

Q And then what happened?

A What happened after what? After I made the distribution of the stock?

Q After you made the distribution of the stock to your customers, what happened?

A Well, I took some stock back from my customers. I gave nine customers a thousand shares apiece and I took back 600 shares from each customer and I gave them back the offering price.

Q How did it come about that you did that?

A I was asked to do that.

Q By whom?

A By Tom Xammas.

Q What did you do with the stock that you took back from your customers?

A I gave them the offering price --

MR. ENTIN: Your Honor, I am goin- to object to the relevancy now.

THE COURT: Overruled.

A I gave them back each $5 a share and I delivered the stock out from our books. They sold 400 shares apiece, 600 shares I took back.

Q And then what did you do with it?

A I gave it to Mr. Zammas.

Q Do you know the defendant in this case William Rodman?

A Yes, I did.

Q Do you see him in the courtroom?

A I do.

MR. BERGER: Identity conceded.

Q Did you employ Mr.Rodman during the year 1972?

A I did.

Q During what period of 1972 did you employ Mr. Rodman?

A From May until the first week in October, I guess.

Q In what capacity did you employ Mr. Rodman?

A As a trader.

Q What were Mr. Rodman's duties as a trader?

A To make markets.

Q What does that mean?

A Trade stocks.

Q What stocks did he trade for you and your firm?

A Power Conversion was one of them. There were several other stocks. I don't recollect at the moment.

Q During the time that Mr. Rodman was employed in your office, from May until October of 1972, did you see Mr. Zammas in your office from time to time?

A Yes, I did.

Q How often.

A A couple of times a week.

Q What did Mr. Zammas do in your office a couple of times a week?

A He was a customer.

Q With whom did he speak?

MR. ENTIN: Objection as to relevancy, your Honor.

THE COURT: Overruled.

A He spoke to me, he spoke to Mr. Rodman.

Q Did your firm, C. I. Oren, make a market in

Power Conversion stock?

A We did.

Q Mr. Orenstein, did there come a time when you had a conversation with Mr. Rodman and Mr. Zammas regarding an article to appear in Value Line Publication about Power Conversion?

A Yes. I was told there was going to be an article.

MR. ENTIN: Objection, your Honor.

THE COURT: I can hardly hear the answer. Will you keep your voice up. Will you repeat the answer.

A I was told there was going to be a writeup.

MR. ENTIN: Objection, your Honor, as to the time and place and the name of the person telling him.

THE COURT: Give me Mr. Lowe a chance to develop it.

Q Mr. Orenstein, you did have a conversation, is that right?

A I was told that there was going to be a writeup, yes.

Q When were you told this?

A A couple of weeks before, I guess, the writeup came.

Q Where were you told this?

A In our offices at 39 Broadway.

Q By whom were you told?

A I don't remember. Either one or both.

Q Either one or both of whom?

A Mr. Rodman or Mr. Zammas.

Q Who was present?

A I would have no reason to discuss it with anybody else.

Q Who was present at the time you were told?

A It might have been thr ehtre of us, it might have been just two of us.

Q What is your best recollection as to who was present when you were told?

MR. ENTIN: Objection, your Honor. This is the third time he has asked the question and the witness has indicated he doesn't remember.

THE COURT: Overruled.

Do you want an answer?

MR. LOWE: Yes, your Honor.

THE COURT: Read the question, Mr. Reporter.

(Question read.)

A I said either one or two. I don't remember.

Q I show you 3508 for identification, Mr. Orenstein, and ask you to look at that. Read it to yourself and just indicate when you are finished reading.

A Yes, sir.

Q Have you read it?

A Yes.

Q Does that refresh your recollection as to who was present at the time of this conversation about the article?

A It really doesn't. It really doesn't, Mr. Lowe.

Q What was the conversation, sir?

A It was very brief. There wasn't much of a conversation.

Q What were you told?

MR. ENTIN: Objection, your Honor. He can't say who told him and therefore it is not proper as to either defendant.

THE COURT: Overruled.

A I was just told they were going to have a writeup in Power Conversion and Value Line was going to write it up. And, I don't know, there was something -- there might be some options. They went to

the company, they liked what they saw, and the fellow is going to get some options for the stock. And that was it and I forgot about it.

MR. LOWE: I have no further questions.

MR. BERGER: No questions, your Honor.

CROSS EXAMINATION

BY MR. ENTIN:

Q Mr. Orenstein, you testified just a brief moment ago your company, C. I. Oren, was a market-maker in Power Conversion, is that correct?

A That's correct.

Q Mr. Orenstein, shortly after the stock had its difficulty in October of 1972 were you summoned to an SEC investigation concerning the stock?

A No, I was not.

Q When was the first time you talked to any representative of the United States Government with regard to what happened with Power Conversion?

A The day the stock dropped I was called and I told them I wasn't going to trade the stock any more. And the following Monday was a bank holiday and the SEC was closed, and Tuesday morning I did go up to meet somebody at the SEC and I told them that I'm closing the office, I wouldn't trade the stock, but there

was no investigation. I was never part of any investigation.

Q Mr. Orenstein, you testified a few minutes ago that Mr. Zammas was a customer.

A He was.

Q And he would come into the office a couple of times a week?

A That's correct.

Q Did he do what other customers do when they came a couple of times a week, look at the pink sheets and see how the stocks were doing and see how the stock market was doing?

A He did.

Q And, Mr. Orenstein, wasn't Mr. Zammas introduced to you by Mr. Rodman as an individual who was a public relations consultant?

A No, that's not so.

Q How was he introduced, sir?

A Zammas introduced me to Rodman.

Q How did you know Mr. Zammas?

A Through Mr. Sidney Stein.

Q How did you know him in terms of what his function was?

A He was just a customer.

Q And he did no more than come into your place and place orders for various stocks?

A That's about it.

Q Mr. Lowe made some comments with regard to the initial offering of Power Conversion.

MR. LOWE: I object to that. I made no comments. I asked questions.

MR. BERGER: I join in that objection, your Honor.

THE COURT: He put a question, yes.

Q With regard to that original offering, did you at any time ever tell Mr. Zammas that you didn't want to put more than 1000 shares of any new issue in Power Conversion in any one customer's name?

A That is true.

Q So that was your decision, basically not to put a lot of this stock in any one of your customers' names?

A That's correct.

Q And Mr. Zammas accommodated your desire by taking back the overage in shares, is that correct?

A The way you put it, I guess so.

MR. ENTIN: Nothing further.

REDIRECT EXAMINATION

BY MR. LOWE:

Q Was it your desire to give the stock back to Mr. Zammas or did Mr. Zammas ask you to give it back to him?

A We had a discussion. He asked to give it back. You are both correct.

THE COURT: I can hardly hear you.

THE WITNESS: They are both correct, your Honor.

THE COURT: Both correct?

THE WITNESS: I couldn't give that much stock to one person, and I gave it to some people and I gave it back in the aftermarket.

Q That was part of an agreement between yourself and Mr. Zammas, is that right?

A That's right, sir.

MR. LOWE: At this time I would beg the court's indulgence. I neglected to ask Mr. Orenstein a question on direct and I would ask permission to ask another one at this time, although I think it is not proper redirect.

MR. ENTIN: Objection as improper. May I have a side bar.

THE COURT: Overruled.

BY MR. LOWE:

Q Mr.Orenstein, I would like to direct your attention to Government's Exhibit 1B in evidence. I direct your attention to the back of each of those three stock certificates and ask you whether or not you can identify the signatures that appear on the back of those certificates.

A Mine is there. I guaranteed it. I'm the guarantor, C. I. Oren, for the signatures.

Q Who are the other signatures besides yours?

A William Rodman and Jeffrey Rodman; William Rodman, Jeffrey Rodman; William Rodman, Jeffrey Rodman.

Q Do you recognize that to be the signature of your former employee, William Rodman?

A I guess so, yes, sir.

MR. LOWE: I have no further questions, sir.

MR. BERGER: A few questions, your Honor.

RECROSS EXAMINATION

BY MR. BERGER:

Q Mr. Orenstein, that stock as was just shown, is that called stock in negotiable form?

A Not the way it is right now, it is not, no, sir.

Q Couldn't you just keep trading that from one person to another that way?

A No.

Q That stock --

A The bank signature or the big board signature, you need.

Q That stock had not been executed by Mr. Rodman so --

A The stock was delivered to our custody for safekeeping. We guaranteed it and put it in a safekeeping vault. Before that, to be a negotiable instrument it has to go to the bank or the big board for signature.

Q Until that time it is Mr. Rodman's stock?

A Yes, it is.

Q And it is not properly given to anyone?

A I have no idea. I didn't give it to anybody.

Q In other words, it couldn't be sold by anyone unless --

A It could be sold but it would have to be guaranteed, my signature.

Q Until that happened it couldn't be sold?

A It couldn't be sold.

MR. BERGER: Thank you.

THE COURT: Anything further?

You may come down.

(Witness excused.)

THE COURT: At this time we are going to recess until 12:15 for lunch. You are excused to 12:15 for lunch. We will recess at 2 o'clock then.

(Luncheon recess.)

AFTERNOON SESSION

(12:20 p.m.)

(In open court; jury present.)

A L A N U M B O G Y, called as a witness by the government, being first duly sworn, testified as follows:

MR. LOWE: May I proceed, your Honor?

THE COURT: Yes.

DIRECT EXAMINATION

BY MR. LOWE:

Q Mr. Umbogy, what was your business during the year 1972?

A I was an individual investor.

Q What did you invest in?

A Stocks.

Q Did you buy and sell shares of Power Conversion stock during that year?

A Yes, I did.

Q Have you entered into an agreement with the government concerning your testimony in this case?

A Yes, I have.

Q Will you tell the court and jury what the substance of that agreement is?

A I have agreed to plead guilty to one count

of violation of the federal securities law.

Q Is that the entire nature of your agreement?

A And I have agreed to give full testimony and full cooperation where it is called for.

Q Do you know the defendant in this case, William Rodman?

A Yes, I do.

Q Do you see him in the courtroom?

A Yes, I do.

MR. BERGER: Identity conceded.

MR. LOWE: Thank you.

Q Do you know the defendant in this case Thomas Zammas?

A Yes, I do.

Q Do you see him in the courtroom?

A Yes, I do.

Q Will you point him out, please?

MR. ENTIN: Identity conceded.

MR. LOWE: Thank you.

Q Mr. Umbogy, directing your attention to the month of September, 1972, did you see Mr. Rodman from time to time during that month?

A Yes, I did.

Q How often?

A Very often. Almost every morning, I would say, but not definitely every morning.

Q Did you see Mr. Zammas during that month?

A Yes, I did.

Q How often?

A About the same time. They were usually together.

Q When you say "they," you mean Mr. Rodman and Mr. Zammas?

A Yes.

Q During September of 1972 what was Mr. Rodman's business?

A He was a broker.

MR. BERGER: Objection, your Honor. No proper predicate.

THE COURT: Overruled.

A He was a broker and a trader.

Q Where did he work?

A At C. I. Oren.

THE COURT: Will you please keep your voice up so that everybody can hear you, the jurors and the lawyers in the back.

Q What was Mr. Zammas' business during Septem-

ber of 1972?

A I believe he was a private investor.

Q Did there come a time, Mr. Umbogy, when you had a conversation with Mr. Rodman regarding an articel to appear in the Value Line publication about Power Conversion?

A Yes, there did.

Q When was that?

A There were two.

Q When was the first?

A The first was the latter part of September, approximately the third week or thereabouts.

Q Of what year?

A Of September, 1972.

Q Keep your voice up, please.

Where did the conversation take place, the first one you have referred to?

A It was on the telephone.

Q Where were you at that time?

A I was at the offices of Albert & Maguire.

Q What was Albert & Maguire?

A A brokerage house.

Q What was the conversation between yourself and

Mr. Rodman at that time? What did you say and what did he say?

MR. ENTIN: Your Honor, I request for limiting instructions regarding conversation between Mr. Umbogy and Mr. Rodman.

THE COURT: Yes. We have instructed the jury before about conversations testified to out of the presence of the particular defendant being taken subject to connection.

Proceed.

BY MR. LOWE:

Q Tell us what the conversation was, Mr. Umbogy.

A Mr. Rodman had asked me to consider purchasing additional shares of Power Conversion because of this article that was coming out and the fact that Value Line was to take a position to buy shares in the stock of Power Conversion approximately a week later.

Q Do you recall any more of that conversation?

A No, I do not.

Q Did Mr. Rodman say anything about why he wanted you to buy the stock?

A I'm sorry. He said he wanted to boomerang the issue, and I asked him what he meant by boomerang,

and he stated that he wanted to get it moving since it had been standing for a while and prior to the article from Value Line coming in, he wanted the stock to be moving upward.

Q What did you say, Mr. Umbogy?

A I said that I would meet him and we could talk about it.

Q Did you thereafter meet with him?

A Yes, I did.

Q When and where did you meet with Mr. Rodman?

A Again, it's late in September, around the 27th, and it was at Wolf's Coffee Shop.

Q Where is that?

A 42 Broadway.

Q Manhattan?

A Manhattan.

Q Who else was present?

A Mr. Zammas.

Q Was that the first time you ever met with Mr. Rodman and Mr. Zammas at Wolf's?

A No, it was not.

Q Prior to the occasion you have just told us about, how many times had you met with them there?

A I couldn't give a definite number but there

were at least three or four other meetings. Everybody -- that seemed to be a congregation place and everybody was there during that period almost every morning.

Q During what period?

A September, 1972, late September.

Q What time of day was this meeting?

A Morning.

Q How early?

A It was about 8:30.

Q Was anyone else present at your meeting besides yourself, Mr. Rodman and Mr. Zammas?

A No.

Q What was the conversation at the meeting?

A Mr. Rodman told me that Mr. Zammas had just finished arranging for this article to be published by Value Line which was due to hit the street that day, and again we discussed additional purchases in the stock of Power Conversion.

He said, "In fact, I have a copy of the article," and I asked, "May I see it?" and he produced an article which was in fact the Value Line article of the same date and gave it to me. He said something to the effect that it was his only copy but he would be getting more later, so I could have it.

Q What did you do with this copy of the article that Mr. Rodman gave you?

A I put it in my pocket. I perused it at that moment and put it in my pocket.

Q What did you do with it thereafter?

A I took it home.

Q What did you eventually do with it?

A I gave it to Mr. Lowe of the U. S. Attorney's Office.

Q I am showing you Government's Exhibit 10A for identification.

Can you identify that document?

A Yes, I can.

Q What is it?

A It is the article of Value Line on Power Conversion that was discussed and shown to me that morning.

Q Is that the specific item that Mr. Rodman gave you?

A Yes, it is.

Q How do you know that?

A First of all, it has his printing on the back of notes he had jotted down. And second of all, I have initialed it and you have initialed it when I

gave it to you.

Q How do you know that the writing on the back of that document is Mr. Rodman's?

A Because I recall him making a note on the back of it.

Q When?

A That morning.

Q The morning that he gave it to you?

A Yes.

MR. LOWE: The government offers 10A.

MR. ENTIN: No objection.

MR. BERGER: No objection.

(Government's Exhibit 10A was received in evidence.)

xx Q Mr. Umbogy, after this meeting that you say you had with Mr. Rodman and Mr. Zammas, did you buy or cause anyone else to buy any Power Conversion stock?

A No, I didn't.

Q What, in fact, did you do?

A Shortly thereafter I decided to sell some shares that I was holding.

MR. LOWE: I have no further questions. Your Honor, may we approach the bench?

THE COURT: Yes.

(At the side bar.)

MR. LOWE: At this point I would like to advise defense counsel that Mr. Umbogy is under investigation in connection with transactions in the following stocks which the government has good reason to believe were of a fraudulent nature.

I will give you this. The stocks are Fantastic Fudge, Power Conversion, Crystallography, Marketing Communication, Franklin and Visual Sciences. Mr. Umbogy's arrangement and understanding with the government is that at the conclusion of all of the investigations presently being conducted he will be required to plead guilty to one count of fraud in connection with his dealings and he will not be prosecuted for anything else he did in connection with these stocks.

MR. ENTIN: May I ask the government another question? Has he ever testified before the SEC at any time either with regard to the investigation of Power Conversion or Crystallography?

MR. LOWE: I don't know.

MR. ENTIN: I think if there is 3500 material, I am entitled to it.

MR. LOWE: There is no 3500 material. Mr. Umobody has never been asked questions about the

subject when there was a stenographer present.

MR. BERGER: When was the date this deal was made?

MR. LOWE: I don't know the exact date. It was late in 1972.

MR. BERGER: Late in 1972?

MR. LOWE: That is correct.

(In open court.)

CROSS EXAMINATION

BY MR. BERGER:

Q Mr. Umbogy, my name is Mr. Berger. I represent Mr. Rodman. You testified that you were an individual investor in stock, is that correct?

A That's correct.

Q Is that the only way in which you made your living?

A Yes, it is.

Q In other words, you bought and sold stocks?

A That's correct.

Q You had no other means of employment?

A That's correct.

Q About how many hours a week did you devote to this business?

A A good number, Mr. Berger.

Q What is a good number, Mr. Umbogy?

A Perhaps 40.

Q Perhaps 40 hours a week.

Do you know an individual by the name of Perry Constantinou?

A Yes, I do.

Q When did you first meet Mr. Constantinou?

A In approximately 19 -- late 1968 or thereabouts.

Q Were you and Mr. Constantinou -- withdrawn.

How did you meet Mr. Constantinou?

A I was introduced to him by an attorney friend of mine.

Q And was there any purpose for the introduction?

A Yes, there was.

Q What was that purpose?

A This attorney was recommending him as a broker.

Q And in 1969 did Mr. Perry Constantinou become your broker?

A Yes, he did.

Q What was the name of his firm at that time?

A Baerwald & DeBoer, I believe.

Q Was he an employee or did he own a part of that firm or all of the firm or any part of it?

A I believe he was an employee only.

Q And he was your customer's man?

A That's correct.

Q Did you use Mr. Constaninou as your customer's man in 1969?

A Yes, I did.

Q Did you have other customers' men then also?

A No, I did not.

Q He was your sole customer's man, is that correct?

A I believe so.

Q And approximately how many different securities did you invest in in 1969?

A I don't know.

Q In dollar volume, approximately how much did you invest in the market in '69?

A I really don't have any idea, Mr. Berger.

Q Was it a substantial amount?

A I really don't have any idea, Mr. Berger.

Q Did you have any earnings in 1969?

A Yes, I did.

Q How much did you earn?

A $25,000 a year.

Q $25,000 in 1969?

A Yes.

Q In 1970 was Mr. Constantinou still your customer's man?

A Yes, he was.

Q Was he still with the same firm?

A No, he was not.

Q What firm was he in then?

A Providence Securities.

Q And in fact he was the owner of Providence Securities, was he not?

A To the best of my knowledge, yes.

Q Did you either loan any money to Mr. Constantinou or invest any money with Mr. Constantinou for Providence Securities?

A Could you clarify the second part of that question, please? Invest with or in?

Q Invest in Providence Securities or loan money to Providence Securities.

A No, I did not.

Q Did you loan any money to Mr. Constantinou?

A No, I did not.

Q Did you loan any money to anyone that there-

after loaned it to Mr. Constantinou?

A No, I did not.

Q What about 1971?

A No, I did not.

Q What year did you loan money to Providence Securities?

A I believe it was in 1972.

Q How much money did you loan Providence Securities?

A I don't recall the amount.

Q Was it more than $10,000 or less?

A Yes, it was.

Q Was it more than 20,000?

A Yes, it was.

Q Was it more than 30,000?

A If I could recall the amount it would be simple, but I don't recall the amount. It was substantial, but everything is relative. It was a good amount but I don't remember the amount.

Q What was your net worth in 1972?

A I don't know.

Q Would $30,000 be a lot of money to you in 1972?

A $30,000 is always a lot of money to me.

Q You said it was relative. I mean relatively speaking to the rest of your net worth, was it a substantial portion of your net worth?

A I don't know because I don't know what my met worth was.

Q What was your income in 1970?

A I was employed at a rate of either 25 or 30 thousand dollars per year.

Q Whom were you employed by?

A Computer Studies, Incorporated.

Q Then you were not solely an investor, were you; you were employed by someone in 1970, is that correct?

A That's correct.

Q So that your prior answer to me, when I said what else did you do and you said nothing, was incorrect; is that a proper statement now?

A No, I don't believe it is. I believe you asked me what I did in 1972, and I was a private investor.

Q You were a private investor in 1971?

A Partially. Part of that year.

Q In 1972, what was the name of your employer?

A I was a private investor in 1972.

Q When did you become employed?

A Could you clarify that question, please?

Q Yes. You just testified you had become employed. What year did you become employed?

MR. LOWE: He testified he became employed before 1972, your Honor. That has been made clear by the witness.

Q Were you employed before 1972?

A When before 1972?

Q In 1971.

A Yes, I was.

Q What did you do in 1969, when you met Mr. Constantinou?

A I was employed by Computer Studies.

Q And your earnings that year were how much?

A $25,000.

Q In 1968 who were you employed by then?

A Computer Studies.

Q What was your salary then?

A I believe it was either 25 or 30 thousand dollars.

Q How old are you?

A Thirty-nine.

Q What is your educational background? Did

you go to college?

A Pardon me?

Q Did you go to college?

A Yes, I did.

Q Did you graduate?

A No, I did not.

Q What year did you stop going to college?

A I believe it was 1958.

Q In 1958 did you become employed?

MR. LOWE: Your Honor, I object to the relevance of 1958.

THE COURT: Yes. Objection sustained.

Q Between 1958 and 1969 was there any period of time when you were a private investor?

A Yes.

Q What period of time was that?

A I believe it was in -- well, by "private investor" --

Q Where all you did was invest in securities.

A I'm sorry, that's not what I understood the question to be. No.

Q Never.

And the first time that you became solely a private investor was when?

A The latter part of 1971.

Q About when was that? October, November, around there?

A I don't recall.

Q Up to that time you were always a salaried --

A Excuse me. I do recall. It was some time in December of '71.

Q Up to that time you were always a salaried employee, when you were working; you worked for a salary up to that time?

A No, not always.

Q Sometimes commissions?

A Yes.

Q I asked you whether you were married, did I not?

A No, you did not.

Q Are you married?

A Yes, I am.

Q Do you have any children?

A Yes, I do.

Q How many children do you have?

A Two.

Q Where do you reside?

A California.

Q Did you ever reside in New York?

A Yes, I did.

Q Did you reside in New York between 1969 and 1972?

A Yes, partially.

Q What part of the time did you reside in New York?

A I don't remember the dates, Mr. Berger.

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Q In 1972, in the months of August and September, were you a resident of California or a resident of New York?

A I was not a resident of California.

Q Where were you residing?

A I believe I was a resident of New York.

Q You are not sure?

A No, I am not.

Q But you are sure that you saw Mr.Rodman and Mr. Zammas in August or September of 1972, almost on a daily basis, is that correct?

MR. LOWE: Your Honor, the term "resident" calls for a legal conclusion.

THE WITNESS: That is my problem. I don't know what it means.

Q Where were you living?

A I was living in New York. I was separated from my wife who was living in New Jersey, which was then my legal address, so I don't know how to clarify it.

Q Were you living in New York?

A Yes, I was.

Q When did you move from New York?

A I am sorry, I didn't hear the question?

Q When did you move from New York?

A In 1974.

Q What was the year that you loaned money to Mr. Constantinou?

MR. LOWE: Asked and answered.

THE COURT: Yes, sustained.

Q Do you remember the month in 1972 that you loaned money to Mr. Constantinou?

A No, I do not.

Q Was it the beginning of the year?

A No, I do not remember.

Q Were you ever repaid that money that you loaned to Provident Securities?

A No, I was not.

Q Is the money due?

A Pardon me?

Q Is the money due? Is the loan repayable, is it due?

A I assume it is not, but again that calls for some definitions.

Q When you loaned him the money,what were the terms of the loan?

A It was a subordinated loan to the firm. I didn't lend it to him.

Q Did you sign a subordinated loan agreement?

A Yes, I did.

Q And that was filed with the Securities and Exchange Commission?

A Yes, it was.

Q And that loan still has not been repaid, is that correct?

A Yes, that is correct.

Q Isn't it a fact that you were Mr. Constantinou's partner in Provident Securities?

A No, it is not.

Q Were you using anyother brokers in 1972?

A Yes, I was.

Q Did you loan them any money?

A No, but I did consider it.

Q In 1969, you testified, the year you met Mr. Constantinou, you didn'tuse any other brokers, is that right?

A I said I don't believe I did. I didn't say that I didn't.

Q What are the brokerage firms? What other brokerage firm handled your account for your in 1972?

A Rittmaster, Lawrence. C.I. Oren, Charter New England. I beieve there were a couple of more but I don't remember the names offhand at the moment.

Q In 1972, did you spend the better part of each

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working day at the office of Provident Securities?

A What part of 1972? Oh, I am sorry, another one I should mention would be Havener Securities.

Q In the beginning of 1972?

A Yes, I did spend the majority of the time in Provident Securities.

Q You did that up to what month in 1972?

A I don't remember which month.

Q When did you first start purchasing Power Conversion stock?

A On the day that it opened. For public trading.

Q That was April 1972?

A I don't know, Mr. Berger.

Q Who did you buy it from?

A Havener Securities.

Q Who recommended that stock to you?

A A number of people.

Q When did you meet Mr. Rodman for the first time, what year?

A I believe it was 1972.

Q What month?

A Early in the year.

Q Was Havener Securities one of the underwriters of Power Conversion?

A Yes, they were.

Q Do you know who the principals of Havener Securities were in 1972?

MR. LOWE: I object to the relevance, your Honor.

THE COURT: Yes, sustained.

Q Did anyone in Havener Securities recommend that you buy Power Conversion?

A Yes, they did.

Q Who made the recommendation?

A For clarification, the first recommendation on Power Conversion was made well prior to the formation of Havener Securities.

Q Was Havener Securities an underwriter on the issue?

A Yes, they were, but not the original underwriter on the issue.

Q I asked you who at Havener Securities recommended that you purchase Power Conversion.

A James Dunn, Joel Halperin, and perhaps others.

Q How many shares did you purchase at the original offering?

A A thousand shares.

Q And between then and the mddle of September

1972, how many shares of Power Conversion had you purchased?

A I don't know the exact number.

Q Had you purchased more than the original thousand?

A Yes, I had.

Q Was it a substantial number? Did you purchase 2000 shares?

A Couldyou clarify the question? Was it substantial or 2000?

Q Did you purchase 2000 shares?

A No. I purchased more than 2000 shares.

Q Approximately how many shares did you purchase?

A I don't know, Mr. Berger.

Q Prior to September of 1972, how often had you seen Mr. Rodman?

A Infrequently.

Q Well, give me a number. How many times had you seen him prior to September 1972?

A I can't give you a number, Mr. Berger, I don't know.

Q When was the first time you ever met with Mr. Rodman prior to September 1972?

A When he and Joe Halperin asked me to park

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10,000 shares of a stock called --

Q I asked you a date, I asked you when was the first time.

THE COURT: Yes.

MR. LOWE: He got an answer.

THE COURT: Yes.

MR. BERGER: I asked when, your Honor, not what happened. I move to strike it.

THE COURT: Overruled.

Q What date was the first time you ever met Mr. Rodman?

A I don't know the exact date.

Q What month?

A I don't know the exact date.

Q What year?

A I just said it was in early '72.

Q And after that, when was the next time you saw him?

A I don't know, Mr. Berger.

Q So between early 1972, and September of 1972, you don't know the dates or the approximate dates you saw Mr. Rodman, is that correct?

A Yes, that is correct.

Q This first telephone conversation you had with

Mr. Rodman, with regard to the Power Conversion article in Value Line, did you call Mr. Rodman or did Mr. Rodman call you?

A I received a message that Mr. Rodman had called and returned his call.

Q At that time where did you receive that message?

A At the offices of Albert and Maguire Securities.

Q And how long had you been at the office of Albert and Maguire Securities?

A How long in minutes? I don't understand the question.

Q For a period of time. Was that your office?

A At that point in time it was.

Q Now, just prior to that time, when had you spoken to Mr. Rodman last?

A I saw him very often in the mornings at Wolf's, and I did say hello and all the rest of it.

Q But you didn't tell him that you were at that office, Albert and Maguire, did you?

A When, Mr.Berger?

Q At any time prior to that phone call.

A Yes, Mr. Berger, he was very well aware that

I was at the office of Albert and Maguire.

Q What were you doing at the offices of Albert and Maguire, working there?

A Working at my private investing, yes.

Q Was Provident Securities still in business at that time?

A Yes, they were.

Q But you were now trading through Albert and Maguire, is that correct?

A Not exclusively, Mr.Berger, no.

Q But you were there every day?

A Not necessarily every day.

Q How often were you there in the month of September 1972?

A I would say I was there every day, but had meetings in other places and out of the office.

Q How long would you go into Albert and Maguire every day?

A I can't state that, Mr.Berger.

Q Was there any specific time that you would be found there?

A I didn't punch a clock, Mr. Berger. I wasn't employed by anybody.

Q Could you be reached at Provident Securities

during that period of time?

A On occasion, perhaps, yes.

Q Did you call Provident Securities every day?

A In what period, Mr. Berger?

Q September 1972.

A No, I didn't necessarily call every day.

Q Isn't it a fact that people that wanted to reach you would call you at Provident Securities in September of 1972?

A No, Mr. Berger, it is not, because I had been out of Provident for quite a period of time while I was at the offices of Havener Securities.

Q Were you calling Mr. Rodman for help with regard to another stock?

A At what period, what time?

Q September 1972.

A Yes, I may have been.

Q Wasn't that the purpose of your call?

A Which call, Mr.Berger? Is there a specific call?

Q A call to Mr. Rodman so he would help you with another stock, isn't that correct?

A Are you speaking of a specific call or a general call?

Q Your calls generally to Mr. Rodman were to seek help with regard to obtaining a stock, purchasing a stock, isn't that correct?

A Partially correct and partially incorrect.

Q In September of 1972, how many shares of Power Conversion did you buy from C.I. Oren?

A I only sold to C.I. Oren, Mr. Berger. I never bought Power Conversion from C.I. Oren.

Q You sold to C.I. Oren?

A That's correct.

Q Do you know how many shares of Power Conversion you sold to C.I. Oren the first two weeks in September 1972?

A Yes,I do, Mr. Berger.

Q How many shares?

A None.

Q When was the first time you sold to C.I. Oren with regard to Power Conversion?

A I must apologize, it was October 4, not late September.

Q So that in September you didn't trade Power Conversion stock through C.I. Oren, is that correct?

A Yes, that is correct.

Q So that you were not a customer of C.I. Oren

with regard to Power Conversion stock in 1972?

A That is correct.

Q And Rodman was not your customer's man, was he?

A Yes, he was.

Q In September of 1972?

A Yes, he was.

Q Did you buy any Power Conversion from anyone in September of 1972?

A No, I didn't.

Q Did you sell any Power Conversion to anyone in September of 1972?

A No, I didn't.

Q So that you had no dealings, either on the buy side or the sell side with Mr. Rodman as your customer's man in September of 1972, is that correct?

A That is not correct.

Q With regard to Power Conversion?

A In regard to Power Conversion, it is correct.

Q You testified thatin the third week of September 1972, you had a telephone conversation with Mr. Rodman, in which Mr. Rodman said to you that he wanted you to purchase some additional shares of Power Conversion because of the fact that there was going to be an article in

Value Line and he wanted to move the stock before, is that correct?

A Couldyou repeat the first part?

THE COURT: Let the reporter read it.

(Question read.)

A I believe I testified that it was approximately the third week in September of 1972.

Q And as a result of that conversation, how many shares did you buy?

A None.

Q Didn't you believe that an article in Value Line would push the stock up?

A I guess not or I would have bought some more.

Q Did you tell Mr. Rodman that you didn't believe that an article in Value Line would help the stock?

A No, I don't believe I did.

Q Did you tell him that you wouldn't purchase the stock?

A Did you tell him that you wouldn't purchase the stock?

A At that meeting at Wolf's, yes, I did tell him I wouldnot purchase the stock.

Q And did you tell him what your opinion was of the value of an article in Value Line?

A I believe I stated that it was a very bullish article.

Q That was after the phone call from Mr. Rodman to you in that first meeting thereafter, is that correct?

A When I was given the article, yes.

Q I am not talking about that meeting. I am talking about the first meeting after the phone conversation.

A That is the same meeting, Mr. Berger. After the phone conversation -- could you please clarify it? I don't understand it.

Q Yes, I will.

What was the date, approximately, of the phone conversation you had with Mr. Rodman in which he asked you for the additional buying in Power Conversion?

A I can only state that it was the day before I was given the article because the meeting was set and did take place the following morning.

Q You read the article and you said it was a bullish article, is that correct?

A That is correct.

Q What does a bullish article mean?

A It means there are positive statements.

Q Was it your opinion that that article would move the stock up?

A Not necessarily. I am not -- I don't claim to be an authority of any kind and my interpretation can be different than someone else's.

Q You say that Mr. Rodman gave you a copy of that article, is that correct?

A That is correct.

Q And that is the article which has been introduced in evidence, is that correct?

A I assume so, yes.

Q What date did you give that photocopy of an article to Mr. Lowe?

A The date that is written in the upper right-hand corner of the article.

Q February 21, 1975, is that correct?

A You looked at it, Mr. Berger, I didn't.

MR. LOWE: I will stipulate it is correct.

Q And you say that that is the same article that you held at your home in September 1972, to February 1975, right?

A Yes, sir, I do. It is the only one I had.

Q Now, between September 1972 and February 1975, did that article ever leave your home?

A No, I don't believe it did.

Q You never showed it to anybody outside of those

people in your home, is that correct?

A I would go with the first part, that I never showed it to anybody.

Q Now, you are sure that in November or December of 1972, you didn't have that article on your person outside of your home? You are sure of that now?

A I believe I didn't have it outside of my home. It was in a file.

Q It was in a what?

A It was in a file.

Q And it was always in that file, you had never taken it out of your home, not up to and not after November of 1972, except to give it to Mr. Lowe, is that correct?

A Yes, I believe that is correct.

Q Whose initials are "B.K." on that article? What do they stand for?

I am sorry, not "B.K." but "Buddy.."

Who is that Buddy.

A I have no idea, Mr. Berger .

Q Did you ever hear of the name Buddy Kozak?

A I don't believe so. If I did, I don't recall it.

Q Are you presently under investigation with regard to various violations of the Securities Act?

A I don't know, Mr.Berger.

Q In 1972, were you under investigation with regard to violations of the Securities Act?

A I don't know, Mr. Berger.

Q In 1973?

A You asked me if I was under investigation. How would I possibly know? I may have been questioned and asked for statements, but I can't state who an investigative power may be.

Q Just give me your opinion. Were you or were you not?

A It is not something I wish to give an opinion on.

Q So you know know?

A That's what I have been saying.

Q And in 1973 you didn't know if you were under investigation, is that correct?

A Again, Mr. Berger, I only know that I was questioned and that certain things were done. I wasnot conducting an investigation on myself.

Q So you don't know whetheryou were under investigation in 1973?

A Could you define it? Investigation means what?

Q You know what it means.

MR. LOWE: He said he doesn't know.

I don't think Mr. Berger should argue.

MR. BERGER: I will not argue.

Q What about 1974, do you know whether you were under investigation?

MR. LOWE: The witness said he doesn't know what Mr. Berger means by investigation. I don't know how he can --

MR. BERGER: I will define the term.

Q Being scrutinized by either some agency of the Government such as the SEC or the U. S. Attorney's office to determine whether you were engaged in activities which would be considered violations of the Securities statutes of the United States of America.

A Now will you go back and give me the dates and perhaps I can answer your question.

Q 1972.

A Yes, I believe I was.

Q 1973?

A Yes, I believe I was.

Q As a matter of fact, haven't you entered into a deal with the Government?

A I have so testified, Mr.Berger.

Q What was that deal?

A As I stated earlier, I have agreed to plead

guilty to one count of a violation of the Federal Securities Laws in exchange for which I will testify and cooperate wherever it is deemed necessary.

Q Have you selected or have you been told which security was involved in the violation you are going to plead to?

A No, sir, I have not.

Q But there were more than one, more than one security was involved in these violations, is that correct?

A Yes, sir, it is.

Q In fact, it was six?

A I believe I gave Mr. Lowe a list of them.

Q It was six securities, is that correct?

A I can't state specifically that it was six, no.

Q Fantastic Fudge?

A Yes.

Q Power Conversion?

A Yes.

Q Crystalography?

A Yes.

Q Marketing Communications?

A Yes.

Q Franklin Marketing?

A Yes.

Q Visual Sciences?

A Yes.

Q Did you agree with Mr. Lowe that you have committed violations of the Securities Act with regard to each and every one of those securities?

A Yes, I believe I have.

Q Do you recall the date of your agreement with Mr. Lowe?

A No, I do not.

Q That agreement was reached in the fall of 1972. Does that refresh your recollection?

A No, I don't think it does, Mr. Berger.

Q I will state that on representation of Mr. Lowe, it was in the fall of 1972.

MR. LOWE: That is the best of Mr. Lowe's recollection, yes, your Honor.

A You know, I don't mean to be difficult --

THE COURT: If you don't remember, Mr. Umbogy, if you don't remember something, say "I do not remember." We do not expect you to testify as to what you do not remember.

THE WITNESS: I can testify, your Honor, that it was after October 12th of 1972.

MR. BERGER: Thank you.

Q Is that agreement in writing?

A Not to my knowledge.

Q It was an oral agreement, is that correct?

A To the best of my knowledge.

Q There are no writings pertaining to it?

A Not to my knowledge, Mr. Berger.

Q Will you please state to the best of your recollection what your agreement was?

A I just stated --

MR. LOWE: Asked and answered.

A -- about a minute ago or so.

Q Let me put it this way: Had you agreed in October, October 12th or thereafter, with the Government, to cooperate with regard to any investigation naming those six stocks or other stocks?

A I had agree with Mr. Lowe, yes.

Q At that time was Power Conversion one of the stocks?

A That was under investigation?

Q That was encompassed in your agreement to co-operate.

A It is on the list, Mr.Berger, and those are the securities we are speaking of, I think.

Q Your cooperation then was to bring every fact regarding possible stock violations, security violations with regard to these stocks to the attention of Mr. Lowe, was it not?

A I am sorry, could I get another read of that, please?

THE COURT: Have the reporter read the question.

(Question read.)

A I believe it was only those I had knowledge of.

Q Was Power Conversion one of those which you hadknowledge of?

A Yes, it was.

Q Did you have a file on Power Conversion in the fall of 1972?

A Could I ask you to define a file in the fall of '72? I don't know where we are again, Mr.Berger.

Q You testified that you had a file on Power Conversion or that this brochure was in your file. Did you have a file --

A Mr.Berger, I didn't testify that I had a file on Power Conversion. I testified I had a file.

Q Did you have a file in 1972 that contained materials on Fantastic Fudge, Power Conversion, Crystalography, Marketing Communications, Franklin Marketing and Visual Sciences?

A Not necessarily all-inclusive, Mr.Berger.

Q Did you have many files that contained records pertaining to those securities?

A No, I didn't.

Q Did you have any files that contained records that would have information relative to those securities?

A Yes, I did.

Q Did you take those files and turn them over

to Mr. Lowe?

A As a matter of fact,no, I didn't. If I did, Mr.Berger, that article would have been in his possession much sooner.

Q As a matter of fact, you weren't really cooperating with Mr. Lowe, were you? You broke your word back in the fall of '72, isn't that true?

A No, that is not true, Mr. Berger, and I think Mr. Lowe and I can best judge that.

Q No. I think the jury can best judge that.

When did you find this article on Power Conversion with Mr. Rodman's alleged handwriting on it? When did you find that for the first time since the fall of 1972? What date did you find it?

A Approximately February 20th.

Q Will you describe the type of file it was in?

A It was a red, reddish manila folder.

Q What else was in that file?

A Trade tickets, other things of that nature.

Q Any other things relative to Power Conversion?

A Yes, sir, I believe there were.

Q What other things relative to Power Conversion were in that file?

A I believe there were other articles that had

previously been published.

Q Did you turn those articles over to Mr. Lowe?

A No, sir, I didn't.

Q Where did you keep this file in which this brochure was kept?

A For clarification, Mr. Berger, I would state that file was perused earlier by a representative of the Government.

Q And at that time where was the file?

A In my home.

Q And what representative of the Government perused that file?

A Mr. Doonan.

Q Did he take anything out of that file?

A I don't recall.

Q Do you recall when that occurred, when he perused the file?

A No, I do not.

Q Do you recall what year it was in?

A It was either very late in '72 or very early in '73.

Q So it is in a very short period of time, late '72 or early '73.

Now, were you there when Mr. Doonan went

over that file?

A Yes, I was there.

Q Did you see him examine each and every document in the file?

A I said he perused it.

Q Did you see him look at the brochure on Power Conversion that was in the Value Line article, the Value Line brochure? Did he look at that?

A I don't recall, Mr.Berger.

Q Did he ask you for that file, Mr. Doonan?

A I believe I volunteered it.

Q Why did you volunteer to show him that particular file?

A Because it was in the spirit of cooperation under which the agreement I had entered into with Mr. Lowe.

Q And before you showed it to him, didn't you know what was in it?

A No, sir.

Q You just picked that file?

A That is the only file I had, Mr. Berger. There were not many files, as I have stated before.

Q He came to your home to look at that file?

A Yes, he did.

Q Did he take any notes?

A I don't recall.

Q Did he ask you any questions with regard to any of the matter that was in the file?

A I believe he did.

Q Do you remember Mr. Doonan taking out the Value Line article and showing it to you?

A No, I do not.

Q Now, this file had been inspected by Mr. Doonan in the early part of '73, is that correct?

A Or the late part of '72. It had been perused, not inspected.

Q Did Mr. Doonan come to your house?

A I have so stated, yes.

Q What agency is Mr. Doonan with?

A I don't actually know, Mr. Berger.

Q Is he with a Government agency, Federal Government agency?

A Mr.Berger, I was introduced to Mr. Doonan by Mr. Lowe and I accepted my directions from Mr. Lowe.

Q How did he introduce him?

A As Tom Doonan.

Q But you recognized him as an officer of the Federal Government, is that correct?

A No, I accepted the representation from Mr. Lowe that it would be in order for me to sit with him and discuss with Mr. Doonan anything he found it appropriate to ask me.

Q Prior to the time Mr. Doonan came to your house did you receive a phone call from him?

A From --

Q From Mr. Doonan.

A From Mr. Doonan?

Q Yes.

A No, I didn't. I don't believe so. I don't recall for sure though.

Q Where were you living at the time?

A In Flushing.

Q Were you expecting him?

A Yes, I was.

Q At what time did you have a conversation with him so that you were expecting him?

A I believe the conversation may have been with Mr. Lowe, who was the only person from whom I accepted directions at that point in time.

Q Prior to this conversation with Mr. Lowe, had you hever met Mr. Doonan?

A Yes, I had.

Q You had met him in Mr. Lowe's office?

A That's correct.

Q Let's go to this conversation with Mr. Lowe. Was this in person or over the telephone?

A Can you clarify which conversation?

Q Yes. The conversation that told you that Mr. Doonan would be coming to your house.

A Yes, it was in person in Mr. Lowe's office.

Q And what did Mr. Lowe say to you?

A "Mr. Doonan is going to come to your home and go over some of these things with you."

Q Some of what things?

A Some of the facts that I was knowledgeable about or had documentation.

Q So that you were expecting Mr. Doonan to come over to your house to look at documentation, is that correct?

A No. That is not what I stated.

Q Please restate. What did Mr. Lowe say to you?

A I don't recall the exact terminology, but it was in the spirit of -- there was a specific term that was used, but I don't remember -- de --

Q Debriefing?

A Perhaps, but I am not sure. I don't recall.

Q When Mr. Doonan came to your house, your apart-

ment, did he ask to see certain documents relative to certain securities?

A Not specifically, no.

Q Tell me to the best ofyour recollection what he said to you.

A I don't have a recollection of my specific conversation, Mr. Berger.

Q Did he askyou to bring him any files?

A I don't recall whether, as I said before, he asked me to bring them or I volunteered them, and had them on the table because I knew he was coming. These are specifics and I don't have a recollection.

Q But you knew he was coming for the purpose of obtaining our cooperation, is that correct?

A That is correct.

Q Part of that cooperation would entail your reviewing certain documents with him, if he desired, is that correct?

A Yes, I would say that is sensible.

Q And at that period of time Power Conversion was one of the securities listed, is that correct? Your deal had been made. Power Conversion was one of the securities, is that correct?

A I'm not sure that Power Conversion was under

investigation at that point. I had been questioned quite thoroughly in the matter of Fantastic Fudge by the Securities Exchange Commission.

Q You listed six securities. Power Conversion was one of them, was it not?

A Yes, it was.

Q Did you go through the file at all prior to the time that Mr. Doonan came to your house to look it over?

A No, I don't believe I did.

Q Did you know what was in the file before you gave it to Mr. Doonan?

A Not specifically, no, only that it was a file of various documents.

Q Did you bother to check the file to see if there was anything very personal in it that you wouldn't want Mr. Doonan to see?

A No,I didn't.

Q Did you check the file to see whether there was anything relevant in it or material to the investigation?

A I stated that I didn't look in the file --

MR. LOWE: I am going to object on the ground there has been no predicate to establish that Mr. Umbogy would know what was relevant and material to an investiga-

tion that he was not conducting.

THE COURT: Yes. Sustained.

Q When Mr. Doonan came to you, did he say, "Give me the file, give me a file," or "Give me all the files"? What did he say to you?

A I don't remember, Mr. Berger.

Q Did you have more than one file?

A I didn't.

Q So you only had one file, the one you gave to him?

A There may have been other documents involved.

Q At any point of time when Mr. Doonan had that file, did you leave the room?

A I do not recall, Mr. Berger.

Q Are you sure that you never left the room?

A I haven't stated that I never left the room.

Q You just don't recall?

A That is what I have stated, sir.

Q So, you also can't testify as a fact that that file was always under your personal dominion and control up until the time that you took out that brochure and handed it to Mr. Lowe, is that correct?

MR. LOWE: I object. If Mr. Berger has an accusation to make, he better be prepared to prove it.

THE COURT: Approach the bench.

(At the side bar.)

THE COURT: Do you mind telling me what this is about?

MR. BERGER: I want to show he didn't have dominion and control at all times of the file.

MR. LOWE: I suggest Mr.Berger is trying to create the impression Mr. Doonan or someone else in the Government planted that file.

MR. BERGER: I am not saying that at all.

MR. LOWE: How would you like to say on the record that you are not.

MR. ENTIN: I have nothing to do with this.

THE COURT: What are you trying to bring out, Mr. Berger?

MR. BERGER: I am trying to bring out that there should be another witness in here to testify as to dominion and control of that file as is done in every case where a file goes from control of one man, FBI to the U. S. Attorney and they take the document and put it in evidence.

THE COURT: The witness here testified that he, the witness, received that document from Mr. Rodman and gave it to Mr. Lowe.

MR. BERGER: But there was a period of time in which there was no dominion or control over the file in which that document was allegedly in his possession.

MR. LOWE: There is no evidence to that. He said he never left his house.

MR. BERGER: I asked him if he left the room.

MR. LOWE: That doesn't mean he didn't have dominion --

MR. BERGER: Once the Government --

MR. LOWE: What is the relevance of that fact?

MR. BERGER: I am probing and I am going to keep probing.

MR. LOWE: You are entitled to probe, but I think it is grossly unfair and improper and unethical to suggest anything that you can't prove by innuendo, Mr. Berger, and you are making it appear or trying to make it appear Mr.Doonan planted something in that file, and I am suggesting this is unethical and unless you have good faith belief that is what happened --

MR. BERGER: We will see.

st T

THE COURT: No, we can't see. You have to have some basis for imputing criminal conduct --

MR. BERGER: I am not --

THE COURT: You are interrupting. You have to have a good-faith basis for imputing criminal conduct of a federal officer.

MR. BERGER: Your Honor, I am not --

THE COURT: The whole inquiry is irrelevant and taking time. This witness has testified that he received the document from Mr.Rodman and identified it, and the initials were by Mr. Lowe and there is Mr. Rodman's handwriting and he turned it over to Mr. Lowe. Where it came from is irrelevant. We will move on to something else.

MR. BERGER: Your Honor, this man says a government agent sent over that file.

THE COURT: It's irrelevant.

MR. BERGER: I don't believe it was in the file. That's the point I am trying to bring out.

THE COURT: If you are suggesting that a federal agent planted it, you have to have some basis --

MR. BERGER: I don't believe it was ever

in the file.

MR. ENTIN: I think what Mr. Berger suggests, your Honor, he is suggesting that it wasn't in the file when Mr. Doonan looked for it, and some time later Mr. Umbogy went and made a Xerox copy of an article to bring to Mr. Lowe to curry favor of Mr. Lowe and --

MR. BERGER: That's right.

THE COURT: You can ask him. Why don't you ask that of the witness. Why don't you ask him if that's what he did?

MR. BERGER: Your Honor, if I ask it that way he is certainly going to deny it.

MR. ENTIN: He is trying to lay the groundwork for it.

MR. BERGER: I don't expect any witness to go ahead and be truthful or lie, but I don't expect to have to put my cards on the table. Mr. Lowe's own witness got on the stand --

THE COURT: If you don't ask that, we will drop the inquiry. You don't have any basis for that except your surmise.

MR. BERGER: I am going to go ahead and ask the question now because of my predicate. I have

laid my predicate and I will ask it. But that was the reason I asked those questions.

MR. ENTIN: I believe Mr. Berger had communication with his client before he cross examined and his client gave him a good-faith indication he had not given an article to this gentleman.

MR. BERGER: Exactly.

MR. LOWE: I suggest, Mr. Berger, that your client has every right in the world to take the stand and say whatever he wants to say.

MR. BERGER: My good faith is the only thing --

THE COURT: You can ask the witness what you suggested.

(In open court.)

BY MR. BERGER:

Q As a matter of fact, when Mr. Doonan was checking that file that brochure was never in there, was it?

A I believe that it was in there, Mr. Berger.

Q You don't recall him looking at it, do you?

A I think I have testified I do not recall specifically that he looked at it.

Q And he didn't ask you any questions about it,

did he?

A About the file or that specific article?

Q About that photocopy of the article.

A I don't recall, Mr. Berger.

Q You don't recall or he didn't?

A I don't recall, Mr. Berger, if he did or did not.

Q If he would have asked you questions about it, don't you think you would have ruled because of the importance of this document?

MR. LOWE: I will object. It calls for a conclusion. It is speculative and a few other things as well.

THE COURT: Yes, sustained.

Q When was the next occasion that you had to go to that file?

A I don't recall, Mr. Berger.

Q Between the time that Mr. Doonan examined the file and the time that you brought that photocopy of the Value Line article to Mr. Lowe, had you examined that file once, twice, many times? How many times?

A I don't know, Mr. Berger.

Q Where were you living on February 21, 1975?

A In California.

Q And that file had been transferred from Flushing to California, is that correct?

A No. I am sorry, Mr. Berger. I must reiterate, on February 21st I was living in New Jersey.

Q 1975?

A Yes.

Q And the file was transferred from Flushing to New Jersey?

A That's correct.

Q What was the date that you moved from Flushing to New Jersey?

A I don't recall the specific date.

Q What year was it in?

A Approximately May of '74.

Q May of '74?

A Approximately.

Q And that was one of many files that were moved?

A No, sir, this was the only file regarding securities themselves that I had.

Q You had other files of different types?

A No.

Q That was the only file you had.

Now, exactly what was involved in that move?

What did you move from Flushing to New Jersey? Was it everything in your apartment or just yourself?

A It was my belongings.

Q Just your belongings?

A That's correct.

Q And among your belongings was this one file, is that correct?

A Yes, that's right.

Q Will you please describe that file?

A I already have.

Q Please describe it --

A A reddish manila envelope with a band, elastic, that goes around.

Q And it had been with you since 1972 or before, is that correct?

A Yes, that's correct.

Q Are you sure that during the time you were moving from your home in Flushing to an apartment in New Jersey you didn't place additional documents or remove any documents from that file?

A I don't know, Mr. Berger.

Q You are not sure that you didn't, though?

A I don't know, Mr. Berger.

Q How did you move from Flushing to New

Jersey? Did you go by car or by truck? How did you move?

A By car.

Q And you had all your belongings in the car?

A Yes.

Q Was there any period of time during that move that you did not have complete dominion and control of that file?

MR. LOWE: I object to the relevance of the question, your Honor.

THE COURT: He can answer.

A Could you repeat the question, please.

Q Was there any period of time during the move from Flushing to New Jersey that you didn't have complete dominion and control of that file?

A Yes, there was.

Q When was that?

A When I placed it in the trunk of the car and drove over.

Q You had dominion and control then.

Now, prior to the time that you moved from Flushing to New Jersey had you moved out of your Flushing apartment physically?

A No.

Q So that there was a period of time in which you had two leases, one in Flushing and one in New Jersey, is that correct?

A No, that's not correct.

Q Was your wife living in the Flushing apartment?

A No, she was not.

Q Were you living there alone?

A No, I was not.

Q Were you leaving somebody from that apartment --

MR. LOWE: Your Honor, I object to the relevance of this line of questions. It has nothing to do with his direct testimony or anything to do with his credibility.

THE COURT: Yes, sustained.

Q Was there a period of time between 1972 and 1974 when that file was in the apartment in Flushing in which it was under the actual control of someone other than yourself?

A Could you define "control," Mr. Berger?

Q Where there was someone that was in the house when you weren't there that could have touched the file, moved the file, put something into it or taken

something out of it.

A Yes, there was, Mr. Berger.

Q When for the first time, to your recollection, were you questioned by any member of the SEC or the U. S. Attorney's Office with regard to the stock Power Conversion?

A Late 1972.

Q At that time who questioned you?

A For specifically Power Conversion, correct?

Q Yes.

A Present were Mr. Lowe, Mr. Lerner, Mr. Tucker, Mr. Goldman. That's approximately those who were present, but it may not be all-inclusive.

Q Where did that discussion take place?

A In the office of Mr. Lowe.

Q Were you given your constitutional warnings? Were you warned of your rights at that time?

A Yes, I was. Mr. Ostreich was also present.

Q Was there a stenographer present?

A No, there was not.

Q Was anybody taking notes?

A Yes, there was.

Q Who was taking notes?

A Various people at various times in the discussion, I believe, Mr. Berger.

Q During that first meeting?

A Yes.

Q How long did that meeting last?

A I don't know specifically. It was a rather long meeting. I would define it in terms of three or four hours or five hours, you know, rather lengthy, the best I can give you.

Q And you saw people taking notes as you were giving testimony or information?

A Yes.

Q And you were given your constitutional rights?

A Yes, I was.

Q Did you have an attorney with you?

A No, I did not.

Q Have you ever seen any of the notes that were taken during that first meeting?

A Yes,I believe I have.

MR. BERGER: Your Honor, I move that if those notes have not been given to me, that they be given to me as 3500 material so I may continue my cross examination.

MR. LOWE: I have nothing that qualifies as 3500 material within the definition of that term for this witness.

MR. BERGER: Your Honor, if there is anything that should be put in camera --

THE COURT: The U. S. attorney just said he doesn't have anything.

MR. BERGER: Your Honor, the witness just testified that he saw notes, he read them and under 3500, that is proper 3500 material.

MR. LOWE: That is not correct. They must relate to the subject of his testimony in this case.

THE COURT: Yes.

MR. BERGER: I predicated my questions with regard to Power Conversion.

I will go one step further.

Q Were there any questions with regard to Value Line and Power Conversion in that first meeting?

A I do not believe there were because the thrust of the first meeting was not relative to Power Conversion as the main thrust.

Q When was the next time you met with either an officer of the SEC or an officer of the U. S. Attorney's Office with regard to Power Conversion?

A I don't know, Mr. Berger, specifically.

Q Was it in 1973, do you recall?

A No, I don't believe it was.

Q In 1972, however, you were asked some questions about Power Conversion, is that correct?

A Yes, I was.

Q In 1973, are you testifying that you were asked no questions about Power Conversion?

A No. I testified that the next meeting was not in 1973.

Q So that in 1973, if there was no meeting --

MR. LOWE: He didn't say there was no meeting. He said the next one wasn't in 1973.

Q I said a meeting with regard to Power Conversion. There was no such meeting in 1973, is that your testimony?

MR. LOWE: It is not.

Q When was your next meeting with regard to Power Conversion and Value Line?

A I don't recall specifically, Mr. Berger.

Q Did you have a meeting with regard to Power Conversion with any member of the SEC, the U. S. Attorney's Office, the FBI or any other governmental agency in 1974?

A I believe I did.

Q With which agency of the government did you have that meeting?

A I believe I did. If I did, I would believe that it would be with Mr. Lowe.

Q And was anybody else present?

A I don't know, Mr. Berger.

Q Where did the meeting take place?

A I say I believe that there was. I don't know the specific meeting.

Q Up until February 21, 1975, prior -- withdrawn.

Prior to February 21, 1975, can you recall any specific meeting with regard to Power Conversion?

A Not a specific date or a specific meeting, no, Mr. Berger.

Q At any time do you recall conversations with members of the federal government with regard to Power Conversion prior to February 21, 1975?

A Specific conversation, no. There were conversations, I'll have to say that.

Q Were there any conversations prior to February 21, 1975 with regard to Power Conversion and the Value Line article?

A Yes, there were.

Q When did that occur?

A Approximately, as I stated before, February 20th.

Q The day before?

A Yes, sir.

Q Were you at their office, the office of the U. S. attorney, or was it a telephone conversation?

A I don't know, Mr. Berger, which it was.

Q And who was the conversation with?

A Mr. Lowe.

Q Did you call him or did he call you?

A I don't know, Mr. Berger. I haven't stated it was a telephone call. I'm not sure.

Q What did he say to you and what did you say to him?

THE COURT: He says that he does not remember whether it was a telephone call. Is that your answer?

THE WITNESS: Yes, sir.

MR. BERGER: I don't care if it was on the phone or not, your Honor.

Q You had a conversation with Mr. Lowe on February 28th. What did you say to him and what did

he say to you?

A The gist of it was regarding this article -- the specific words I do not recall, Mr. Berger, but I do recall he asked me to check that file, my file, and see if that article was in there.

Q Prior to February 28, 1975, had you had any discussions with Mr. Lowe regarding Power Conversion and Value Line?

A I don't know, Mr. Berger.

Q You don't know.

Are you sure that you didn't have any prior conversations?

A I don't know, Mr. Berger.

Q So you cannot testify that prior to February 20, 1975 you told Mr. Lowe of this alleged conversation with Mr.Rodman that allegedly took place in September of 1972, can you?

A Nor can I testify that I didn't.

Q That would be a pretty important conversation to have, wouldn't it?

A I testified I don't know, Mr. Berger.

Q So you do not recall testifying prior to February 20, 1972 that you met with Bill Rodman and that he handed you the Value Line article in September

of 1972, is that correct?

A I got a date mixed up there of February, 1972 --

Q February 20, 1975, prior to that date, you can't recall a conversation with Mr. Lowe in which you told him of the Value Line article on Power Conversion and your conversation with Mr. Rodman, which allegedly took place in September of 1972?

A I don't know, Mr. Berger. I don't recall the specific conversation. I can't testify to something that I don't have a specific knowledge of.

Q Do you remember telling Mr. Lowe prior to February 20, 1975 the testimony that you gave here today concerning the meeting that Mr.Rodman allegedly had with you when he gave you the brochure of Value Line?

MR. LOWE: I object. It is the same question, just different words. He said he can't remember.

THE COURT: Yes. The witness has testified he can't recollect any such conversation.

Mr. Berger, it is 2 o'clock and, as previously announced, we are going to recess now until 10 o'clock Monday morning.

The jury is excused.

THE WITNESS: Your Honor, may I state that presents a particular hardship to me since I'm commuting from California.

THE COURT: We will take it up when the jury is gone.

The jury is excused until 10 o'clock Monday morning.

(The jury left the courtroom.)

THE COURT: Mr. Umbogy, your cross examination by Mr. Berger is not complete so you will have to be here at 10 o'clock Monday morning.

Mr. Entin, had you planned to cross examine this witness?

MR. ENTIN: Yes, your Honor, quote extensively.

THE COURT: So you will have to stay over in New York and be here Monday morning.

MR. LOWE: Perhaps I should tell your Honor that in light of what I really didn't anticipate would be a really extensive cross examination, I am not at all sure that we will be able to rest on Monday since apparently this witness will go on for some time.

THE COURT: How many more witnesses do

you have?

MR. LOWE: I have five more, your Honor.

THE COURT: All right. We will recess until 10 o'clock Monday.

(Adjourned to Monday, August 4, 1975, at 10:00 a.m.)

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Robert J. Wymbs (Resumed)		597	619	
Irving Orenstein	660	667	670	671
Alan Umbogy	674	684		

EXHIBIT INDEX

Government	Identification	In Evidence
10A		682

United States of America

vs. 74 Cr. 987

William Eric Aiken, William Rodman and Thomas Zammas

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New York, New York.
August 4, 1975 - 10:00 A.M.

(Trial resumed.)

(In open court; jury absent.)

THE COURT: Good morning, ladies and gentlemen.

Bring in the jury, please.

Get the witness, please.

(Jury present.)

THE COURT: The witness has been previously sworn.

MR. LOWE: Yes, your Honor.

THE COURT: You are still under oath.

Continue, Mr. Berger.

A L A N U M B O G Y resumed.

CROSS-EXAMINATION (continued)

BY MR. BERGER:

Q Mr. Umbogy, you testified you reached an arrangement with the Government some time in the fall of 1972, is that correct?

MR. LOWE: Asked and answered, your Honor.

THE COURT: Yes. Sustained.

Q Mr. Umbody, what led you to the office of the U. S. Attorney in the fall of 1972?

A Various factors, I think, as the result of their inquiry of people, of friends of mine in the stock of Fantastic Fudge.

Q And did youreceive a letter from Mr. Lowe or a phone call from Mr. Shaeffer? Which was the first Governmental agency that contacted you with regard to Fant astic Fudge?

A The Securities and Exchange Commission.

Q Prior to that time, had youbeen contacted by any Governmental agency with regard to any knowledge you might have with regard to potential or possible securities law violations?

A Prior to this Fantastic Fudge inquiry?

Q Yes, sir.

A No, I had not.

Q And do you recall when you were contacted by the Securities and Exchange Commission?

A No, I do not.

Q Was that by letter or was that by subpoena?

A I believe it was by subpoena.

Q How long prior to the fall of 1972 were you so contacted?

A I don't remember, Mr. Berger.

Q Do you have a general idea?

A No, I don't.

Q At that first meeting, before the Securities and Exchange Commission, were you under oath? Did you testify under oath?

A I don't recall, Mr. Berger.

Q Do you recall whether you were given your rights, the right to counsel, the right to remain silent, et cetera?

A Yes, Mr. Berger, I was. I was told it was an officer of the Government -- I don't know the exact terminology and this was an official inquiry into the stock, Fantastic Fudge.

Q Did you have an attorney with you at that time?

A No, I didn't.

Q At that meeting, did you give evidence to the Securities and Exchange Commission?

A I answered their questions. I don't know if that became evidence.

Q Were those questions limited to Fantastic Fudge, if you recall?

A I believe they were, Mr. Berger, yes.

Q Did there come a time immediately thereafter that you were called to either the SEC or the U. S. Attorney's office again?

A Immediately thereafter?

Q In other words, prior to the time that you finally reached an agreement with the U. S. Attorney's office, how many meetings did you have with either the SEC or representatives of the SEC or the U. S. Attorney's office?

A I believe it was two.

Q And do you recall when that second meeting occurred?

A No, I do not.

Q Was that second meeting before the SEC or the U. S. Attorney's office?

A The SEC.

Q And at that time did they ask you questions with regard to securities other thanFantastic Fudge?

A No, they didn't, Mr. Berger, to the best of my recollection.

Q And did you volunteer information to them with regard to securities, other than Fantastic Fudge?

A No, I didn't, Mr. Berger.

Q And that was the last meeting you had prior to arriving at an agreement with the U. S. Attorney's office?

A Yes, Mr. Berger, it was.

Q Did you have an attorney with you at that second meeting?

A No, I didn't.

Q Did you believe, during either the first or second meeting, that your activities with regard to Fantastic Fudge were being looked at for potential criminal liability?

A I don't know what I believed, Mr. Berger, at that moment in time.

Q Were you in some fear that they might be?

A I don't know what I believed at that time.

Q Did there come a time when you believed that your activities were being looked at with regard to potential criminal liability?

A Yes, there did, Mr.Berger.

Q And can you tell me when that time came?

A I believe it was some time in October of 1972.

Q At the time tnat you arrived at an agreement with the United States Attorney's office?

A Yes.

Q Do you know what is meant by stock manipulation?

A The book definition?

MR. BERGER: I withdraw the question.

Q In your mind, what does stock manipulation mean?

A Anything other than free trading and letting a stock seek its own level.

Q Did you manipulate or participate in the manipulation of the stock Fantastic Fudge?

A Yes, I did.

Q And did you know this at the time that you went down to the Securities and Exchange Commission the first time?

A I wasn't as knowledgeable then as now, Mr. Berger.

Q Did you know it the second time you went down to the Securities and Exchange Commission?

A I don't think I had a true understanding of what was happening and how it was happening.

Q After those two meetings before the Securities and Exchange Commission, was your next meeting with Mr. Lowe?

A I believe so.

Q And how many meetings did you have with Mr. Lowe prior to your arriving at the agreement you eventually entered into with the Government?

A I don't know, Mr. Berger.

Q Was it more than one?

A It may have been. I don't know, Mr. Berger.

Q Did you have an attorney present with you at any of those meetings?

A No, I didn't.

Q At the time of those meetings were you concerned about potential criminal liability ?

A I think at that point I was as much afraid for my life as I was for criminal liability.

Q Were you concerned about criminal liability at those meetings?

A I don't recall my concerns at that moment, Mr. Berger.

Q Did you believe during those meetings, at the time of those meetings, that you had committed certain acts that might be considered violations of the United States securities laws?

A Yes, I did.

Q And at that time did you volunteer information to Mr. Lowe with regard to what those acts might be?

A At what time, Mr.Berger? Are we on this first meeting or subsequent meetings?

Q Your first meeting with Mr. Lowe.

A Yes, I did.

Q Was that prior to the time that you had reached an agreement with Mr. Lowe?

A Yes, it was.

Q And had you told them about your involvement in various stocks at that time?

A No, I don't believe I did. I talked to him only about one specific stock.

Q And what specific stock was that?

A That was Fantastic Fudge.

Q Did you have any involvement with a stock called Visual Sciences?

A Yes, I did.

Q You didn't tell Mr. Lowe about your involvement in that stock at the first meeting, did you?

A I think a number of stocks were mentioned at that meeting, but the main thrust of the questioning was in Fantastic Fudge.

Q Did you tell Mr. Lowe that you had been involved in certain perhaps unlawful activities with regard to any stock other than Fantastic Fudge?

A Yes, I believe a number of stocks were mentioned.

Q Did you tell Mr. Lowe of your involvement in those stocks?

A No, I don't believe that the discussions went into specifics in anything other than Fantastic Fudge.

Q So at that first meeting you were not there for the purpose of cleansing your soul and telling Mr. Lowe of all the criminal activities you were involved in, were you?

MR. LOWE: I will object to that. That calls for an improper conclusion, I think.

THE COURT: Yes. Sustained.

Q Did you go to that first meeting for the purpose of telling Mr. Lowe ever criminal activity you were involved in with regard to securities?

A Yes, I did.

Q And did you tell him every criminal activity you were involved in with regard to securities?

A At that first meeting?

Q Yes, sir.

A No, I didn't.

Q Did you participate in the manipulation of a stock called Visual Sciences?

A I don't think I know to this point the true definition of manipulation, but I would say that in the stock of Visual Sciences, no, I didn't play an active role.

Q What about the stock Franklin Marketing?

A Yes, I believe I did.

Q And Marketing Communications?

A Yes, I believe I did.

Q Crystalography?

A Yes, I believe I did.

Q Your agreement with Mr. Lowe was that you would cooperate in the investigation of these particular securities with regard to violations of law, is that correct?

A No. My agreement was to cooperate in any way that I was called upon.

Q Beyond those securities, if necessary, correct?

A Wherever I was knowledgeable.

Q And it was also part of your agreement that you would plead guilty to one count in some future indictment, is that correct?

A Yes, that is correct.

Q And do you know or were you told which stock would be involved in that indictment?

MR. LOWE: Asked and answered Friday.

THE COURT: Yes. Sustained.

Q Have you been indicted --

MR. LOWE: Asked and answered.

THE COURT: Yes, sustained. We have been over this, Mr. Berger.

MR. BERGER: I am sorry, your Honor, I just didn't have my transcript --

THE COURT: We have been over it several times on Friday.

Q How many cases have you testified in pursuant to your agreement with Mr. Lowe?

A This is the first.

Q This is the first since your agreement in 1972?

A Yes, it is.

Q And since the date of your agreement in 1972, how many meetings have you had with Mr. Lowe?

A I don't know, Mr.Berger. I couldn't recall the number.

Q Were they many?

A I don't know how many is, Mr. Lowe.

Q More than five?

A I believe so, but I can't give you a number.

Q Was one of the incentives for entering into this agreement with Mr. Lowe in your mind a way of limiting your liability?

A No. It was more a way of living with myself.

Q The fact that you might have to go to prison didn't enter into your thinking when entering into an agreement?

A I don't know, Mr. Berger, what went through my mind then.

Q Were you advised that cooperation you gave the Government would be made known and the event would be made known to a sentencing Judge in the event you were indicted and pleaded guilty?

A Could you repeat that, please?

Q Yes. Were you advised by Mr. Lowe that in the event, pursuant to this agreement, you were in the future indicted and you did plead guilty, your cooperation would be made known to the sentencing Judge?

A Yes, I believe that was mentioned.

Q And was this a consideration in your cooperation with the Government?

A No, Mr. Berger, it is not.

Q You don't care if Mr. Lowe advises the sentencing Judge of your cooperation, do you?

A I understood you to say was this a consideration.

Q Was a consideration. Is this a consideration?

A At that point in time?

Q Yes.

A No, it was not.

Q Is it a consideration now?

A No, it was not. I have entered into an agreement and this is where it is at.

Q One of the considerations for entering into the agreement was not that Mr. Lowe would make known your cooperation to the sentencing judge, is that correct?

A No, it was not, Mr. Berger.

Q You didn't ask Mr. Lowe whether he would make known your cooperation to the sentencing judge, did you?

A No, I did not, Mr. Berger. At the time that I went to the U. S. Attorney's office I didn't know what the U. S. Attorney's Office was, to be very honest. When was the first time you advised Mr. Lowe of your discussion with Mr. Rodman with regard to the Value Line article?

A I believe it was in mid-February of 1975.

Q Had you read about the indictment in the newspapers.

A No, I had not.

Q Had you known about the indictment prior to February, 1975?

A No, I don't believe I did.

Q When was the last time you spoke to Mr. Lowe or anyone in his office prior to February, 1975?

A I don't know, Mr. Berger.

Q Was it in 1975?

A I don't know, Mr. Berger.

Q Was it in 1974?

A I don't know, Mr. Berger.

Q But you do recall that on September 27, 1972, at 8:30 in the morning of that day, you met with Mr. Rodman and had this specific conversation which you testified to today, is that correct?

A Yes, I believe it is.

Q Could it have been on September 29th that you had the conversation?

A No, I don't believe so.

Q Could it have been on September 26th?

A No, I don't believe so.

Q So you remember that date very clearly in your mind, do you not?

A Yes, I do.

Q Mr. Umbogy, did you write off the loss that you had on your subordinated loan to Mr. Constantinou's company, Providence Securities, did you write that off on your tax return?

MR. LOWE: I object to the relevancy.

THE COURT: Overruled. No, I did not.

Q In what year did you have that loss?

A 1972.

Q Did you have income in 1972?

A No, I did not. On the net I did not.

Q When you say on the net, would that be after deducting the loss to Providence Securities?

A Among other losses, yes.

Q Did you file a tax return in 1972?

A I asked for a meeting with Internal Revenue. I told them of the entire situation, and Mr. Mangano of IRS was doing a lot of research on it.

Q Did you file a tax return in 1972?

A I believe it was an extension granted as a result of these transactions.

Q How long an extension did you get?

A I don't know, Mr. Berger. I had again spoken to them fairly recently regarding the situation.

Q Did you file a tax return in 1973?

A Yes, I believe I did. Although there were certain contingencies going back to the '72 return.

Q Are you sure that you filed a tax return in 1973?

MR. LOWE: Your Honor, perhaps we could have the question clarified as to filing in 1972 or 1973.

Q For 1973.

A I'm sure that I had meetings with Internal Revenue and I'm sure that certain forms were filled out which I did sign. Now there were, as I say, other factors involved, so I don't know the exact definition of terminology of -- may I explain it in another sense?

Q Mr. Umbogy --

A I had a liability to file a tax return and that does not exist with me so I don't know the status.

Q Did you have more than 7500 of income before deductions in 1973?

A Yes, I believe I did.

Q Did you file a tax return for the year 1973?

A Yes, I believe I did.

Q Did you file a tax return for the year 1974?

A Yes, I did.

Q Did you file a tax return for the year 1971?

A Yes, I believe I did.

Q Did you have any discussions with Mr. Lowe with regard to your possible tax liability for the year 1972?

A No, I did not.

Q Did you tell the people at Internal Revenue that you were cooperating with the government with regard to matters that would be reported in your tax

return for 1972?

A Yes, I believe I did.

Q Did you tell them that because of that cooperation you wanted an extension of time to file your tax return?

A No, I did not.

Q Was Visual Sciences a stock that was brought out by Mr. Constantinou's company?

A Providence Securities, yes.

Q At the time you had a subordinated loan in Providence Securities?

A No, I did not.

Q When did you -- withdrawn.

On which date did you stop using Providence Securities as your brokerage firm, or one of your brokerage firms?

A I don't know the date, Mr. Berger.

Q Was it in 1972?

A Yes, it was, Mr. Berger.

Q Was it in the fall?

A I don't know, Mr. Berger.

Q Was it before or after Mr. Constantinou pleaded guilty to a securities violation?

A Before, I don't know that it was.

Q You are not sure of that date, is that correct?

A Of what date?

Q When you stopped doing business with Providence Securities.

A No, I'm not sure of the date.

Q Prior to February, 1975 you didn't know of the indictment in this case?

A I don't believe I did, Mr. Berger.

Q When was the first time you learned of the indictment.

A I don't know, Mr. Berger.

Q Could your conversation that you have testified to with Mr. Rodman have taken place on September 30, 1972?

A No, Mr. Berger, I don't think so.

Q The date that is clear in your mind is September 27, 1972, is that correct?

A Yes, Mr. Berger.

Q Do you recall the date that you made a deal with the government?

A No, I do not.

Q You don't recall how many times you met with the U. S. Attorney's Office between February, 1975 and the time you made your agreement?

MR. LOWE: Your Honor, he testified that he made his agreement back in 1972. February, 1975 is substantially subsequent to that and between then he couldn't have had conversations between '75 and the time he made his agreement.

Q Between 1972 and 1975 how many conversations did you have with Mr. Lowe?

THE COURT: We have been over that many times.

Q If you recall, Mr. Umbogy, prior to your bringing the article, photostatic copy of the article, to Mr. Lowe, when was the last time you met with any member of the U. S. Attorney's Office or SEC?

A Either one or two days prior to bringing in the article.

Q And prior to that meeting when was the last time you met with them?

A I don't know, Mr. Berger.

Q Was it almost a year that you hadn't met with them?

A I don't know, Mr. Berger.

Q At that meeting,prior to the time that you brought in the article in Value Line, which was, you say, a day or two before that time that you gave him

the article, did you tell Mr. Lowe about the article?

A Prior to that meeting?

Q Prior to that meeting that you brought it to him?

A No, I did not. It didn't have any importance.

Q So that in that one or two-day period something had happened that made it important to you, is that correct?

A Yes, it is.

Q You had had other meetings concerning Power Conversion prior to that meeting, the first meeting in February, 1975, had you not?

A Yes, I had.

MR. BERGER: I have no further questions, your Honor.

CROSS EXAMINATION

BY MR. ENTIN:

Q Mr. Umbogy, my name is Mr. Entin. I represent Tom Zammas.

Mr. Umbogy, you testified yesterday that in 1971, '72, you were an individual investor primarily, isd that correct?

A Yes, I testified on Friday to that.

Q What is your occupation today?

MR. LOWE: I object to the relevance.

THE COURT: Overruled.

A I'm a sales representative.

Q For what sort of com pany?

A An educational company.

Q In California?

A Yes.

Q Mr. Umbogy, you testified as to certain matters which occurred in the month of September, 1972, and you have testified to them with a certain specificity in dates.

Do you recall each of the dates precisely that you have testified to?

A No, I don't believe -- I would like a little more than understanding of that question.

Q You have testified that you met with Bill Rodman, Tom Zammas on September 27, 1972, is that correct?

A Yes, it is.

Q Mr. Berger asked you if it could have been September the 26th and you said no, is that correct?

A That is correct.

Q Mr. Berger asked you if it could be September

the 28th, and you also said no, is that correct?

A That is correct.

Q My question to you is, how do you pinpoint September 27th?

A Through the -- first of all, the use of a calendar. Second of all --

Q What day was September 27th?

A I don't recall.

Q How did the calendar help you?

A There were certain events that led up to it. But on top of that, that was the day the Value Line article hit the street, so to speak.

MR. ENTIN: Mr. Lowe, do you have a copy of the Value Line article that you placed in evidence.

MR. LOWE: I do. I will stipulate the date of it was September 9th.

Q Mr. Umbogy, you just testified you pinpoint September 27th because that's the date it hit the street. My question is, if the date of the article is September 29th, could you be in error?

Would you like to see the article?

A Yes, it could be in error.

Q Then when you told Mr. Berger and you told this court and you told this jury that you were sure

it was September 27th, you were not sure?

A It could have been an error. That's what I said.

Q Could have been or was an error, Mr. Umbogy. You have now seen the date of the article.

A I can't change my testimony because of the date of the article. I can only testify as to what I believe.

Q You are not supposed to testify as to what you believe. You are supposed to testify as to what you know.

Now, do you know --

MR. LOWE: Your Honor, I would like Mr. Entin instructed that he is not to instruct the witness and I do think in fact the witness is supposed to testify as to what he believes. At least as opposed to what he doesn't believe.

MR. COURT: The witness has testified that the date was September 27th. You have shown him the article and he still says it is September 27th and he may be in error. Where do you want to go from there, Mr. Entin.?

MR. ENTIN: Your Honor, he testified he was sure of the date; that was the only date of any of

any of the questions regarding dates he was sure of. I am trying to see --

MR. LOWE: Your Honor, he said he thought it was that date and didn't think it was other dates. He never said he was sure, in those dates, that that was the date.

THE COURT: I don't recall specifically his testimony.

MR. ENTIN: I believe he said he was sure. If the court reporter could read that question and answer --

THE COURT: You mean just a moment ago he said he was sure.

MR. ENTIN: Yes, 'a'am.

THE COURT: You said how he could pinpoint it.

MR. ENTIN: He was sure, he said.

THE COURT: Let the reporter read it back.

(Record read.)

Q At this point, Mr. Umbogy, you are not sure if the date you met with Mr. Rodman and Mr. Zammas was September 27th, is that correct?

A I believe it to have been September 27th, but I could have been in error. I may be in error.

Q Then it could have been September 28th, could it not.

A Yes, I guess it could have.

Q And it could have been September 29th, could it not?

A Yes, I guess it could have.

Q And it could have been September 30th, could it not?

MR. LOWE: In that connection, would your Honor take judicial notice of the day on which September 30th fell? I think he might be able to answer the question if he knew that.

I have a calendar, your Honor. It's on the inside cover of this book.

THE COURT: You want to show the witness a calendar?

MR. LOWE: September 30th was a Saturday.

MR. ENTIN: I withdraw the question.

Q Mr. Umbogy, from your testimony yesterday

I got the impression that Wolf's, where you met for breakfast, was sort of a hangout for the people that worked on Wall Street during the early '70s, is that correct?

A Some of them, yes.

Q Did you hang out there for breakfast pretty regularly.

When I say breakfast, I mean a cup of coffee in the morning.

A In the period that we are speaking of, I was there pretty frequently in the morning, yes.

Q Was Billy Rodman there pretty frequently?

A Yes, I believe he was.

Q Was Tom Zammas there pretty frequently?

A Yes, I believe he was.

Q So the meeting that you are discussing was one of perhaps a long series of occasions when you ran into Mr. Rodman or maybe ran into Mr. Zammas in Wolf's, isn't that correct?

A No, it was not, Mr. Entin, it was as a result of the phone call the day prior.

Q Which would be September 25, 26, 27 or 28, is that correct?

A The day prior to the meeting.

Q But you are not sure which date?

MR. LOWE: I think we have been over this sufficiently, your Honor.

THE COURT: Yes, we have.

MR. ENTIN: This is with regard to the phone call, your Honor, not with regard to the meeting.

We hqve established he is not sure of the date of the meeting. I want to establish he is not sure of the date of the phone call.

MR. LOWE: It is obvious he said the date of the phone call was the date before the meeting and that is the only way he has ever identified the day of the phone call.

Q Going into that phone call, Mr. Umbogy, what was the exact conversation you had with Bill Rodman?

A I can't give you a verbatim conversation, Mr. Entin.

Q What is the best you can recall.

A As I testified on Friday, Mr. Rodman was looking for buying in Power Conversion to boomerang the stock, get it moving, so to speak, because of the up-coming article in Value Line and the potential stock purchases by Value Line.

Q Are you acquainted with Value Line in any

other kind of manner , other than the fact that it is a financial publication?

A No, I'm not.

Q Are you aware of the fact that Value Line is printed and distributed prior to the issue date?

A No, I'm not.

Q Isn't it possible, Mr. Umbagy, that what Mr. Rodman actually said to you on the telephone when he spoke to you was Value Line has come out with an article?

A No, it is not.

Q When you say "No, it is not," was this a very significant conversation in your life?

A Any conversation which involves a potential investment of $420,000, I think, is pretty significant.

Q There is no question, but was it one which you would remember as well today as if it were yesterday?

A No, but because of my interest in the stock I would have known if the article was already on the Street.

Q Would you know if it was going to be on the street the following day?

A I would assume so.

Q Well, in your mind, you were receiving, the

day the article was coming out, from Mr. Rodman a Xerox copy of an article, is that correct?

A Yes, that's correct.

Q To receive a Xerox copy of an article, would that indicate to you that there was a printed article somewhere?

A A Xerox is a copy of something, yes.

Q So obviously the article had already been printed at the time you saw it, is that correct?

A Not necessarily correct, Mr. Entin.

Q Did you believe it had already been printed?

A I don't know what I believed.

Q You don't know what you believed?

A At that moment regarding --

Q Isn't it the truth that you didn't even think what you believed at that time?

A Yes, that is probably true.

Q He handed you a Xerox copy of the article and you didn't ask about the fact that it was printed or distributed already, he just gave you a Xerox copy, is that it?

A And said "Here is a copy of the article," yes, "which is going to hit the street today."

Q "Here is a copy of the article which is

going to hit the street today," correct?

A Yes.

Q There was no big secret about it, was there?

A That's correct.

Q Ahd if you were receiving advance notice of the publication of an article, you were only receiving advance notice of maybe 30 minutes, is that correct?

A That -- I didn't testify to that, but I believe that, in essence, 30 minutes or two hours. I don't know.

Q Did Bill Rodman tell you he paid for this article?

A No, he did not.

Q But he told you it was coming out that day?

A Yes, he did.

Q Did you ask him where he got a copy of the article?

A No, I did not.

Q He could have gotten it through a perfectly legitimate source, couldn't he?

MR. LOWE: I object. It is speculation.

THE COURT: Yes. He is not here to speculate.

MR. ENTIN: Strike the question.

Q A few moments ago, when Mr. Berger was questioning you, you had indicated that the reason that you are cooperating with the government is, and I believe your words were, you wanted to live with yourself, is that correct?

A Yes, that's correct. That's partially correct.

Q What is the other part?

A The other part is that at that point in time I didn't know with whom I was doing business and who was wno any more.

Q I can accept that? That was the first time that you went to the U. S. Attorney's Office?

A Yes, thawt's correct.

Q By the time you got to the U. S. Attorney's Office the second time, did you have an idea of who you were dealing with?

A Oh, I'm sorry, Mr. Entin. I think you misunderstood. I meant who I was dealing with in the stock market and who all the various people were.

I came to the U. S. Attorney's Office -- actually, my call was to the Securities and Exchange Commission, and they introduced me to Mr. Lowe.

Q Did you know you were dealing with Mr. Perry Constantinou?

A Yes, I did?

Q Did you know that he was -- and using your expression or your terminology as you understood it -- manipulating Fantastic Fudge? Did you know that?

A At that point I believe I did, yes.

Q And you knew that you were participating in this manipulation, did you not?

A Yes, I believe I did.

Q So you had a pretty good idea of who you were dealing with and what you were doing, didn't you?

A Well, in that particular sense, yes, but there is always much more to it, Mr. Entin.

Q I agree there is much more to it.

Now let me ask you this --

MR. LOWE. I think that Mr. Entin should perhaps let Mr. Umbago answer that question about what his thinking was at that time. I don't think he has been given a chance to explain it. He has been interrupted several times with additional questions.

MR. ENTIN: My apologies.

Q Explain your answer, Mr. Umbago. At that poi nt in time there were people running around

making threats, there were people threatening to kill other people --

MR. ENTIN: Objection, your Honor, as to that.

MR. BERGER: Objection.

THE COURT: Approach the bench, please.

(At the side bar.)

MR. BERGER: I am sure that Mr. Lowe did not anticipate that answer or he would have cautioned the witness or brought it to defense counsel's attentin that threats are highly prejudicial. This witness, by being permitted to explain, has just gone ahead and brought the question of threats on his life or threats on the street going around related to this case, perhaps.

THE COURT: He was being asked why he went to the U. S. attorney.

MR. ENTIN: No, that wasn't the question.

THE COURT: Just a moment. He has been asked and previously mentioned threats before as part of his reasons for going there.

Why we are going into this again may bring out prejudicial matter. Why are we going over this again?

MR. ENTIN: The reason I am going over it again, your Honor, is he indicated the reason he was cooperating was that he wanted to bare his soul. He also testified when he went to the U. S. Attorney's Office he never asked about his cooperation being made known because he didn't know who Mr. Lowe was. He never got --

MR. LOWE: You are putting things --

MR. ENTIN: Do you recall that?

MR. LOWE: Mr. Entin is putting things together that don't fit together.

He said in the beginning he didn't understand who the U. S. attorney was. He didn't say that is why he didn't ask.

The reason he didn't ask to have the cooperation brought to the attention of the sentencing judge was he didn't have to ask, he was told. That is something that we tell anybody who makes an arrangement with us. That is, generally speaking, what we offer in addition to limiting the number of crimes.

He didn't ask for that. I don't know if he would have none to ask. I remember that he was told it without having to ask.

THE COURT: The agreement also says so,

doesn't it?

MR. ENTIN: There is no written agreement in this particular matter. That is why we have to go into it.

MR. LOWE: The fact is that that is part -- I never heard of an agreement that didn't have that as part of it.

This man came in, he was never represented by counsel on any occasion he was in there. I am quite sure that I volunteered that information that that would be part of his arrangement because he -- I doubt he would have known to ask and I know that it is something we put in every deal without thinking about it.

The final thing I want to say is Mr. Berger questioned Mr. Umbogy extensively on what was going on in his mind when he came into the U. S. Attorney's Office. Mr. Entin has also done that.

I think that this witness is entitled to say exactly what was going on in his mind, and if it is prejudicial to the defendants it is too bad. They started it. They asked the questions. They don't like the answer, but they did ask the question and it is their own fault.

THE COURT: Just a moment all of you.

As I have said, this witness has mentioned this for the second time.

If you pursue it, Mr. Entin, he is going to bring out matters which are highly prejudicial to your client You have been warned of it. So now I am notgoing to hear any motion for a mistrial if you pursue this.

He has said that one of the reasons he went to the U. S. attorney was that he feared for his life. That is probably true. So if you want to keep bringing it out, you go right ahead.

MR. ENTIN: Your Honor, my only --

THE COURT: You can ask him whether it is not his understanding that the government would bring to the attention of the sentencing judge his cooperation with the government and let it go at that. You can bring that out. You can bring out that he has a motive probably to testify favorably for the government. You can bring that out.

But these details that have gone into this kind of examination just take up time.

Mr. Berger went over that 15 times. Now, you have a right to do it. You have a right to bring that out. It has been brought out, but you don't have

the right to go over it 15 times and you don't have the right to go into every detail as to what day a meeting with the U. S. attorney took place because it doesn't advance anything except to waste time.

He has been over that, you have asked him, so if he brings up again that his life was threatened, I am telling you now I am not going to hear any motion for a mistrial.

MR. ENTIN: Your Honor, I wouldn't open that door again, but I don't think my client threatened his life.

THE COURT: That may be inferred if you keep on. That is the danger.

This isn't getting us anywhere.

MR. ENTIN: I move to strike the last response, your Honor.

THE COURT: This isn't getting us anywhere. You have a right to show he has a motive. You brought it out, Mr. Berger has brought it out.

MR. ENTIN: I will move on, but I still move to strike the last response as prejudicial.

THE COURT: You will only emphasize it, don't you think, for me to go on and tell them to disregard it?

MR. ENTIN: I move for a mistrial on that basis.

THE COURT: I will bring it out. I will tell the jury to disregard it.

MR. BERGER: I don't want it brought out. Your Honor, I agree with your Honor.

THE COURT: Let us proceed.

Do you want me to mention it again? Is that what you want me to do, Mr. Entin?

MR. ENTIN: I would like the instruction, your Honor, to disregard it, it has nothing to do with this case.

MR. LOWE: Your Honor, I strongly object to granting the motion to strike. The answer was responsive to the question as to what was in his mind mind and it should stand as such.

I think I know what he is talking about and I am almost 100 per cent certain that he would respond in the negative to a question as to whether either of the defendants in this case threatened his life.

MR. BERGER: Can you find out and we will ask it?

MR. ENTIN: We can clarify it that way.

MR. BERGER: That would be the best thing.

MR. LOWE: I am perfectly willing to find out if that is his answer. I know he has told me in the past who did.

MR. BERGER: Fine, great. That would satisfy everybody.

THE COURT: All right, you can ask him that, but let us move on.

MR. BERGER: Don't ask him until Mr. Lowe finds out.

MR. LOWE: I am not going to ask the question in open court.

MR. BERGER: No.

MR. ENTIN: Can we have a brief recess while Mr. Lowe chats with the witness? Two minutes would be sufficient. In fact, one minute probably would be sufficient.

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THE COURT: I think you could ask him whether any of these defendants --

MR. ENTIN: That is what he is going to ask him and if his answer is negative then I will ask that question in open court if these defendants threatened him. If that is the answer, it is as good as an instruction.

THE COURT: All right.

MR. BERGER: Thank you, your Honor.

(In open court.)

THE COURT: You may proceed.

MR. ENTIN: I thought we were going to take a very brief recess, about one minute.

THE COURT: Pardon me, I didn't understand that. YOu say you thought we were going to take a brief recess?

MR. ENTIN: For about one minute for Mr. lowe to make inquiry into what we just discussed.

THE COURT: All right, we will take a recess at this time.

The jury is excused.

(The jury left the courtroom.)

THE COURT: Mr. Lowe, did youwant to put certain questions to the witness?

MR. LOWE: Certainly, your Honor, I see no reason not to do it right out in the open.

EXAMINATION

BY MR. LOWE:

Q Umbogy, in connection with your testimony that among other things when you came to the U. S. Attorney's office in 1972 you were afraid for your life, had you ever received a threat to your life from either of the defendants in this case?

A No, I had not.

THE COURT: All right. We will take a ten-minute recess at this point.

(Recess.)

(In open court; jury absent.)

THE COURT: Are we ready to proceed now, Mr. Entin?

MR. ENTIN: Yes, your Honor.

THE COURT: Bring in the jury, please.

(Jury present.)

BY MR. ENTIN:

Q Mr. Umbogy, at any time prior to your going to the U. S.Attorney's office in 1972, did either Mr. Zammas or Mr. Rodman threaten you in any way?

A No, they did not.

Q Mr. Umbogy, did you know a Ronald Martini?

A Yes, I do.

Q How do you know Mr. Martini?

A I met him through Perry Constantinou.

Q And he was also involved with regard to the manipulation of Fantastic Fudge?

A Yes, I believe he was.

Q Do you know what he did for a living in 1972?

A I believe he was a private investigator.

Q Like yourself and Mr. Zammas?

A Yes.

Q Do you know a man named Leonard Fiocco?

A No, I do not.

MR. ENTIN: Nothing further, your Honor.

THE COURT: Any redirect?

MR. LOWE: Yes, your Honor, I do have some.

REDIRECT EXAMINATION

BY MR. LOWE:

Q Mr. Umbogy, during the period of time from September of 1972 up until February of 1975, did the article about Power Conversion have any particular significance in your mind?

A No, none whatsoever.

Q Do you to this day have any clear understanding of any significance of anything you have said here?

A No, I really don't.

Q You testified on Friday in response to a question from Mr.Berger that Mr. Rodman knew that you were at Albert & Maguire during September of 1972.

How do you know that Mr. Rodman knew that?

A I told him that I was there.

Q The telephone call which you testified to which you say you got a message and returned a call from Mr. Rodman in connection with your testimony here in this case, was that the only phone conversation you had with Mr. Rodman at Albert & Maguire?

A No, I had quite a few.

Q You were asked by Mr. Berger on page 702 of the transcript, "What were you doing at the offices of Albert & Maguire, working there?"

What were you doing at the offices of Albert & Maguire in September of 1972?

A I was working on Crystalography and Marketing Communications which I had a continuing interest in.

Q And with whom were youworking?

A Billy Rodman in part, Perry Constantinou in part, Ron Martini, maybe a few others that I don't recall at the moment.

Q Mr. Umbogy, during your cross-examination on Friday by Mr.Berger, do yourecall being asked the follow-

ing questions and giving the following answers:

MR. ENTIN: What page?

MR. LOWE: Page 703.

"Q Were you calling Mr. Rodman for help with regard to another stock?

"A At what period, what time?

"Q September 1972.

"A Yes, I may have been.

"Q Wasn't that the purpose of your call?

"A Which call, Mr. Berger? Is there a specific call?

"Q A call to Mr. Rodman so he would help you with another stock, isn't that correct?

"A Are you speaking of a specific call or a general call?

"Q Your calls generally to Mr. Rodman were to seek help with regard to obtaining a stock, purchasing a stock, isn't that correct?

"A Partially correct and partially incorrect."

Mr. Umbogy, during September of 1972, what was the purpose of your calls to Mr. Rodman?

A To get help in Crystalography, Marketing Communications and there were many other discussions. At one point Mr. Rodman was considering getting involved with

Fantastic Fudge and he called and he asked me what I thought of it since I was known as Mr. Fudge at that time.

Q What did you tell him?

A I told him to stay away from it because it was under investigation by the Securities and Exchange Commission.

MR. ENTIN: Objection at this time, your Honor. I would like to approach the side bar.

THE COURT: Overruled.

If you are making a motion, it is denied.

MR. ENTIN: May I reserve the right to make it at a later time?

THE COURT: It is denied now.

Q When you say you were asking Mr. Rodman for help in connection with stock, what does that mean?

A Buying. Buying of shares, placement of shares, parking of stock, anything of that generality.

Q Were you asking Mr. Rodman to help you with what you have testified as with your manipulations?

MR. BERGER: Objection, your Honor.

THE COURT: Will yourepeat the question. I didn't quite get it.

Q The question was, were you asking Mr. Rodman to help you with what you have testified with your manip-

ulations?

THE COURT: And the objection?

MR. BERGER: Yes, your Honor, I have an objection. I would like to voice it at the side bar or I will voice it now.

The testimony being elicited by Mr. Lowe at this time goes far outside of the scope of the direct, it is not for the purpose of rehabilitating the witness, it is for the purpose of expanding upon his testimony in an area which is not necessary, not relevant.

The witness is testifying the same way as he did on cross-examination by me. The additional evidence being elicited by Mr. Lowe could make this a trial within a trial. That is going a step too far, and at this time I don't believe that I should be put in a position where I have to go into those matters because they are certainly far afield and they do not add anything to Mr. Umbogy's answers on his cross-examination.

The balance of my objection I would make at side bar if your Honor feels I must go any further than I just have.

THE COURT: Overruled.

MR. ENTIN: I have an objection which must go side bar with regard to this line of questioning.

Mr. Zammas is not involved in any of this discussion between Mr. Umbogy and Mr. Rodman and as such I do have a motion at side bar.

THE COURT: We will take it subject to connection to Mr. Zammas.

Overruled.

Q Can you answer that question, Mr. Umbogy?

A Could you repeat it, please?

THE COURT: Have the reporter read it.

(Question read.)

A Yes, I was.

Q Did you get any help?

A Yes.

MR. BERGER: Your Honor, I object, move to strike, move for a mistrial.

THE COURT: Overruled. Motion denied.

MR. ENTIN: Your Honor, I do so on behalf of the defendant Zammas in particular.

THE COURT: Are you making a motion?

MR. ENTIN: Yes, your Honor.

THE COURT: Denied.

Q Referring to page 704 of the transcript of Friday, Mr. Umbogy, do you recall being asked the following question and answer:

"Q When was the first time you sold to C.I. Oren with regard to Power Conversion?

"A I must apologize, it was October 4, not late September."

Do you recall that question and that answer late Friday?

A Yes, I do.

Q Did you have any conversation with Mr. Rodman concerning that transaction?

A Yes, I did.

Q Will you tell us when and where did the first such conversation about that transaction take place?

MR. ENTIN: Your Honor, I would ask for a limiting instruction.

MR. LOWE: This evidence is offered solely against Mr. Rodman.

A On the morning of October 6, 1972, in the meeting at the offices of Havener Securities.

Q Who was present?

A Mr.Rodman, myself, Mr. Caccesse, Mr. Halpern and a few minutes later Mr. Lang and Mr.Feuer.

Q What was the conversation between yourself and Mr. Rodman regarding the transaction, the sale transaction of October 4?

A Mr. Rodman had stated that he had to put a ticket through, meaning that there were no records on the books of C.I. Oren of that particular transaction, and if I didn't cancel the trade before noon the whole issue would fall apart that day.

Q Did you cancel the trade?

A Not at that point, no.

Q How do you remember that it was October 6th?

A Because that was the day that the issue fell apart.

MR. LOWE: I have no further questions.

THE COURT: Anything further pertaining to this redirect?

MR. BERGER: Yes.

RECROSS-EXAMINATION

BY MR. BERGER:

Q Was Fantastic Fudge one of the securities that you were manipulating?

MR. LOWE: Asked and answered, your Honor. This has been gone over a number of times.

THE COURT: He has. You asked him on redirect so you can ask it again.

A Yes, it was.

Q Mr. Rodman didn't help you with that manipulation,

did he?

A No, he did not.

Q As a matter of fact, Mr. Rodman didn't help you with any manipulation, isn't that so?

A We participated in the same issue, which is, to my mind, a manipulation. I don't know if he helped me or --

Q Did you tell Mr. Rodman that you were manipulating the issues that you asked his help in?

A No, he already knew that.

Q Did you tell Mr. Rodman that you were manipulating the issues in which you asked his help in?

MR. ENTIN: Your Honor, I object to this line of questioning and I move for a severance.

THE COURT: Denied.

A Could I hear the question again, please?

Q Did you tell Mr. Rodman that you were manipulating the issues that you asked his help in?

A No, I did not.

Q Did Power Conversion fall apart on October 6th because you refused to cancel the ticket?

A I don't know the full circumstances under which it fell apart.

MR. BERGER: No furtner questions, your Honor.

BY MR. LOWE:

Q What stocks were you involved with Mr. Rodman in?

THE COURT: Just a moment. Do you have an objection, Mr. Entin?

MR. ENTIN: No, your Honor, but I believe I have a turn.

THE COURT: Oh, yes.

MR LOWE: I am sorry.

RECROSS-EXAMINATION

BY MR. ENTIN:

Q I just have one question. While you were at Albert & Maguire, andyou were doing whatever you were doing with Mr. Rodman and Mr. Constantinou, you weren't doing anything with Mr. Zammas, were you, on those issues that you testified about?

A On --

Q Crystalography and Fantastic Fudge.

A No, I was not.

Q He was in no way involved?

A Not to my knowledge.

MR. ENTIN: Nothing further.

BY MR. LOWE:

Q What stocks did you work with Mr. Rodman in?

A Crystalography --

MR. BERGER: Objection, your Honor. The same objection. It has not probative value as to the charges in the indictment, it is collateral and it is not for the purpose of changing the witness' story, it is just for the purpose of expanding upon it just to bring out why he called him, etc.

The witness testified that he called Mr. Rodman and that Mr. Rodman called him --

THE COURT: If you have an objection, please state it.

MR. BERGER: The objection is that the testimony is not relevant, it is not material, it is not probative and that its prejudicial effect by far outweighs any probative value it possibly can have to the allegations in this indictment and it certainly should not be brought out any further than they have been and they should not have been brought out this far.

THE COURT: Overruled.

Do you have the question?

THE WITNESS: No, I don't, your Honor.

THE COURT: Repeat the question.

Q What stocks did you work with Mr. Rodman in?

A Crystalography, Marketing Communications.

Q Mr. Umbogy, do you know what a marketmaker is?

A Yes, I do.

Q What is a marketmaker?

A He is the person who buys and sells shares and maintains a bid and ask price on a particular security.

Q With regard to the securities you were just talking about, was Mr. Rodman a marketmaker?

A No, I don't believe he was.

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Q In response to the last question by Mr. Entin, you said as far as you know, or at least you didn't have anything to do with Mr.Zammas in connection with Crystalography and Marketing Communications. Did you have anything to do with Mr. Zammas in connection with Power Conversion?

MR. ENTIN: Objection, your Honor. I didn't open the door. I limited it to Crystalography and Fantastic Fudge.

THE COURT: Are you making an objection?

MR. ENTIN: Yes, your Honor, I object.

THE COURT: Overruled.

Q Do you have the question?

A Yes, I did have dealings with Mr. Zammas in stock of Power Conversion.

Q When did you have such dealings?

A I don't know the particular days, Mr. Lowe.

Q Give us an approximate date.

A I don't know the specific date.

Q What year was it, Mr. Umbogy?

A 1972.

Q What month?

A I don't know the specific date, Mr. Lowe.

Q What time of year was it?

A There were more than one.

Q During what period of time was it?

MR. ENTIN: Your Honor, I am going to object at this point. The man has already indicated and answered the question several times.

THE COURT: Overruled.

A It was between the date of the offering of Power Conversion and the date of October 6, 1972. I don't know a specific date.

Q Did you enter into any transactions with Mr. Zammas in that stock?

A No, I didn't.

Q Did you discuss with Mr. Zammas the possibility of entering into transactions with him?

A Yes, I did.

Q Will you tell us what the nature of that transaction was?

MR. ENTIN: Objection, your Honor. This is far afield, certainly.

THE COURT: Overruled.

A We discussed a potential park, an agreement under which one party holding shares for a period of time and then it is taken out at a profit.

Q What was the substance of that discussion?

MR. ENTIN: Your Honor, I object because of the time and place. It is made between a period when the stock opens and October 6. We can't pinpoint this to a month.

THE COURT: See if you can get the witness' best recollection as to when this transaction occurred, Mr. Lowe.

MR. LOWE: Certainly, your Honor.

Q This specific transaction you talked about, the park, as you call it, what is your best recollection as to when that possible transaction was discussed?

A I don't have any recollection as to a day or --

Q Mr. Umbogy, do you have any idea what the price, the market price of Power Conversion stock was at the time of this conversation?

THE COURT: Do you have an objection?

MR. ENTIN: I object, your Honor. It is still not specific as to time and place.

THE COURT: He is trying to make it specific. Overruled.

Q Do you have any recollection of what the price of Power Conversion stock was at the time you had this conversation or discussion with Mr. Zammas?

A I believe it was in the very low forties.

Q Do you recall for how long a period of time the stock was at that price?

A Quite a while.

Q What is quite a while?

A I can't define the time, I am sorry.

Q Was it six weeks?

A I don't know, Mr. Lowe.

Q Was this conversation you are now saying you had in April of '72?

A No, I don't believe the stock was at that price in April.

Q Was it in May?

A No, I don't believe it was in May.

Q Was it in June?

A I don't believe it was, no.

Q Was it in July?

A I don't know, Mr. Lowe.

Q Could it have been in July?

MR. ENTIN: Objection to what may be possible, your Honor.

THE COURT: Yes.

MR. LOWE: I withdraw the question.

Q Was it in August?

A Was the meeting -- I don't know --

Q We are trying to ascertain your best recollection as to when this conversation took place.

THE COURT: The question to the witness is whether the stock Power Conversion was at about 40, which he has been answering.

Q Is that the question you have been answering?

A Yes, it is, Mr. Lowe.

Q Let me then state another question: Was your conversation with Mr.Zammas in April, May or June of 1972?

A I don't believe it was.

Q Was it in July, your conversation?

A I don't know, Mr. Lowe.

Q Were there any dates discussed in the course of your conversation?

A Yes, there were.

Q What date was discussed?

A Approximately October 17.

MR. ENTIN: Objection, your Honor.

THE COURT: Approximately what?

THE WITNESS: October 17.

MR. ENTIN: Your Honor, I object to a date discussed in the conversation because he still haasn't set the conversation as to date, place and time.

THE COURT: Overruled.

Q What is your best recollection as to how far away October 17th was at the time of the conversation?

A My norm in transactions of that nature would be 60 or 90 days.

Q Is there anything, any fact, any document, anything you know of in existence that would help you recall the date of this transaction better than you have been able up to now -- this conversation, excuse me. I don't mean transaction.

A It is the only time I went to the offices of C.I. Oren, if anybody keeps a record of something of that nature.

Q Did you see anyone keep a record when you went there?

A No, I didn't see anyone keep a record.

Q Very well. From what you have said, did this conversation take place at C.I. Oren?

A Yes, it did.

Q Who was present?

MR. ENTIN: Your Honor, I am going to object. I still don't have time, I still don't have an approximate period of time. I am entitled to that.

THE COURT: I believe the witness testified

it was between two specified dates.

MR. ENTIN: Yes, your Honor, April of 1972 and October, I guess, of '72.

MR. LOWE: I think he has limited it to the period of July to October, your Honor. I think he said either 60 or 90 days prior to the 17th of October, which is fairly pinpointed as best we can do at this point.

MR. ENTIN: Your Honor, 120 days is not enough.

THE COURT: Overruled.

Q Who was present at this conversation, Mr. Umbogy?

A Mr. Rodman, Mr. Zammas and myself.

Q What was the conversation?

A The conversation was regarding additional buying or a park in Power Conversion.

Q Who said what?

A Mr. Rodman said something to the effect of could you handle 10,000 shares, some discussion ensued. Then Mr. Rodman left the details to be worked out or the potential details to be worked out between Mr. Zammas and I, and he went back to the trading room.

Q What was your conversation with Mr. Zammas at that time?

A As best I recall, there was a $38 purchase price on a block of stock and a $42 take out of repurchase after October 17.

Q What, if anything, was said about the significance of October 17?

A Nothing was said to me.

Q What do you mean by the term "park"?

A An agreement to hold stock for a period of time, not sell it in the open market.

Q What do you mean by the term "take out"?

A Repurchase.

MR. LOWE: I have no further questions.

THE COURT: Anything further?

MR. ENTIN: No, your Honor, nothing further.

THE COURT: Mr. Berger?

MR. BERGER: No, your Honor, nothing further.

THE COURT. You may step down. Next witness.

MR. LOWE: The Government calls Mr. Dan Lettieri.

D A N A . J. L E T T I E R I, called as a witness by the Government, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LOWE:

Q Mr. Lettieri, what is your business?

A I run a bar and restaurant in Greenwich Village.

Q What is the name of your establishment?

A No Name Bar.

Q How long have you been in that business?

A Eleven years.

Q Do you know a man named Eric Aiken?

A Yes.

Q Did you know him in 1972?

A Yes.

Q How well did you know him in 1972?

A He was and still is a friend.

Q Was he also a customer?

A A very good customer.

Q Directing your attention to the month of September of 1972, Mr. Lettieri, did you enter into any kind of business transaction with Mr. Aiken at that time?

A Well, during that period I was involved with a stock. I don't know if I should name it or not.

Q Did you enter into a transaction with Mr. Aiken?

A Yes, I did .

Q What was the nature of that transaction?

A I was in trouble on a margin call and Mr. Aiken volunteered to help me get out of trouble, if I could, by

lending me some money.

Q Did he lend you any money?

A Yes.

Q How much money did he lend?

A A total of $2500.

Q On how many separate occasions did he lend you money adding up to $2500?

A Two separate occasions.

Q What form was the money given to you in?

A Cash.

Q Where was it given to you?

A In the bar.

Q What time of day was it given to you?

A I don't know the exact time of day, but it was toward the evening.

Q I am showing you Government Exhibit 6A for identification, Mr. Lettieri. Can you identify that document?

A That is my handwriting, yes.

Q What is that document?

A I wrote this down a note, to Eric, that I owe him this money.

MR. LOWE: The Government offers 6A in evidence.

MR. ENTIN: No objection for the defendant Zammas.

MR. BERGER: No objection for the defendant Rodman.

xxx (Government Exhibit 6A was received in evidence.)

Q Mr. Lettieri, the date of this document is October 5, 1972.

When in relation to when Mr. Aiken gave you the money did you write that document?

A I wrote this about two weeks or three weeks after he gave me the money.

MR. LOWE: I have no further questions.

A (continuing) In fact, he trusted me that much --

CROSS-EXAMINATION

BY MR. ENTIN:

Q Was that two or three weeks after --

A I really don't know. Eric and I were very close friends at the time. When he helped me out of this trouble, I felt being that I have a bad heart condition, in case something happened to me I didn't want to see him beat out of the money so I wrote this down on my own accord.

Q It was done two or three weeks after you received the money?

A Maybe a week after, maybe a couple of days after. I don't know exactly but it was after I received

the money.

Q You don't really know when you wrote it then?

A About two weeks. I would say around two weeks.

Q How did you receive the money, what kind of payments?

A I received it in cash. Once $500, and then $2000.

Q Was this two or three weeks after the two thousand or two or three weeks after the 500?

A After the two thousand.

Q Two or three weeks after you received $2000?

A Well, to be honest with you --

Q To the best of your recollection.

A I can't recollect. It was after I received the money.

MR. ENTIN: Nothing further.

THE COURT: Mr.Berger?

MR. BERGER: No questions, your Honor.

THE COURT: Thank you, you may come down.

(Witness excused.)

MR. LOWE: The Government calls Larry Lindsey.

L A W R E N C E L I N D S A Y, called as a witness by the Government, having been first duly sworn, was examined and testified as follows:

THE WITNESS: My name is Lawrence Lindsay. My address is 26 Federal Plaza, New York, New York.

DIRECT EXAMINATION

BY MR. LOWE:

Q Mr. Lindsay, directing your attention to the period August and September 1972, what was your occupation?

A I was a cashier operations manager for C.I. Oren Company, Incorporated.

Q What were your duties in that job?

A I post all the records of the transactions that were made in the firm. Most of the records.

Q I am showing you Government Exhibit 16 for identification. Can you identify those documents?

A This is the purchase and sales blotter and the received blotter.

Q Was that a record that was made and kept in the ordinary course of business of C.I. Oren?

A Yes, it was.

Q Was it in the ordinary business of that company to make and keep records such as that?

A Yes.

Q And with respect to the entries on that record made at or about the time that the transactions to which they refer took place?

A The day after.

Q Could you tell us specifically what that record shows, what events are recorded in that record?

A All purchases and sales made for the firm's trading, and its customers, all checks being sent out, all checks coming in, all stocks being received, stocks being delivered to customers, to other brokerage firms, for C.I. Oren.

MR. LOWE: At this point the Government offers Exhibit 16 in evidence.

MR. ENTIN: Your Honor, I object to this as a cumulative record with things in it which do not at all apply to either of the defendants in this case. There is not way I can look at this and tell what Mr. Lowe is driving at.

MR. LOWE: I think by occupation Mr. Rodman was the trader at C.I. Oren and I think to the extent the record reflects the transactions at C.I. Oren, they relate to Mr. Rodman and specifically relate to the question of whether or not he was a dealer.

In addition to that, I have further questions

for this particular witness as to some of the contents of those records. I do not move the entire contents of those documents into evidence at this point, other than for the purpose of showing the active trading going on at C.I. Oren during the period of time in question, which I haven't yet established but I will momentarily.

I also intend to offer a summary as to certain transactions which are reflected in those documents.

THE COURT: It is being offered for a specific period of time, not the entire record, is that it?

MR. LOWE: That is correct, your Honor.

THE COURT: All right.

MR. ENTIN: Your Honor, this is all of the purchases and record of a brokerage house from August to October of 1972. It is a myriad of materials which do not apply to any of the defendants. C.I. Oren is not a defendant here.

THE COURT: Your objecton is overruled.

Do you have an objection to that?

MR. BERGER: I understand, your Honor, this is being offered to show that Mr. Rodman was a dealer?

THE COURT: That is what Mr. Lowe just said.

MR. LOWE: Yes, and it reflects transactions of the stock in this case.

MR. BERGER: May I voir dire?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. BERGER:

Q Mr. Lindsay, are transactions reflected in this exhibit other than those that were done by Mr. Rodman as trader?

A Mr. Rodman, Mr. Orenstein and Mr. William Rosenthal.

Q Were there any other customers men in the firm?

A No, that was it. That is the total.

Q Therefore, this document reflects trade of persons other than Mr. Rodman?

A A few, yes.

MR. BERGER: I object to it on that basis, your Honor, unless the witness can just pull out the specific trades and pages and identify them that he wishes to put into evidence. Otherwise there will be evidence of individual trades that do not relate to the defendants in this case.

THE COURT: I understood Mr. Lowe to say he is offering it as to the particular period of time and those payments I assume can be taken out.

MR. LOWE: Those are the payments, your Honor.

THE COURT: The entire book is being offered then?

MR. LOWE: That is correct, your Honor. That book is not in the form it originally was.

THE COURT: The pages --

MR. LOWE: The pages relate to the period of time August to October.

THE COURT: The entire document is being offered, is that right?

MR. LOWE: Yes, the entire document is being offered.

MR. BERGER: There are transactions in here that do not relate to Mr. Rodman.

THE COURT: Overruled. Let it be received.

xxx (Government Exhibit 16 was received in evidence.)

BY MR. LOWE:

Q Mr. Lindsay, showing you Government Exhibit 16A for identification, can you identify that?

A This is one I made up.

Q When did youmake that up?

A Last week.

Q At whose request?

A Yours.

Q Could you tell the jury exactly how you prepared that document and specifically where you got the information reflected on that document from?

A I took all of the purchase and sales that were made on the purchase and sales blotter and I listed all of the Power Conversion transactions on another sheet, and then totaled them up to get these balances here.

Q Did you obtain the information reflected on that document from Government Exhibit 16 in evidence?

A Yes.

Q Is this document a summary of some of the entries in Government Exhibit 16?

A Yes, it is.

Q And is it a summary of those entries which relate to the stock of Power Conversion, Inc.?

A Yes, it is.

MR. LOWE: The Government offers 16A in evidence.

MR. ENTIN: Objection as to relevance in this particular case.

THE COURT: Overruled.

MR. BERGER: No objection, your Honor.

THE COURT: Received.

xxx

(Government Exhibit 16A was received in evidence.)

Q Mr. Lindsay, you have entered on the top of this document, Government Exhibit 16A, period August 1, 1972 to October 6, 1972. Is that correct?

A Yes, it is.

Q You have set up four columns of figures headed by the name "C.I. Oren & Company, inc."

Could you explain to us what the meaning of the entries under each of those four columns is?

A The number of sale transactions, was a total number of sale trades made between August 1 and October 6, 1972.

Q Sales of what?

A Power Conversion.

Q How many were there?

A 120.

d 3A

Q What is the next column?

A The next column is the total number of shares that was sold in regards to that number of transactions.

Q What was that number?

A 129,310 shares.

Q What is the next column?

A The number of buy transactions taken from the purchase and sales blotters.

Q How many buys were there?

A 295.

Q What is the next column?

A The number of shares that were both in those transactions.

Q How many shares?

A 96,182.

Q On the right-hand side on that document, on the right-hand side of the fold in it, you have again a series of four columns headed by the name of "Thomas Zammas," is that correct?

A Yes, it is.

Q Would you explain to us what the entries under that name reflect?

A Again, it was the number of sales transactions

for that period of time.

Q By whom?

A Thomas Zammas.

Q At C. I. Oren?

A Right.

Q How many were there?

A Ten.

Q What was the total number of shares involved?

A 18,000.

Q Were there any purchase transactions?

A No.

Q Mr. Lindsay, during the period of time you were employed at C. I. Oren -- actually, how long a period of time was that?

A Six weeks with the firm, then I liquidated the firm, which was another six months.

Q Did you know Mr. Rodman at C. I. Oren?

A Yes, I did.

Q What was his position there?

A He was a trader.

Q How did you come to be hired by C. I. Oren?

A Through Mr. Rodman.

Q Had you known him previously?

A Yes, I did.

Q What was Mr. Rodman's function at C. I. Oren?

A Securities trader for the firm.

Q What does a securities trader do?

A He buys and sells securities for the firm's accounts. He was also salesman, a registered representative for customer accounts.

Q In response to a question by Mr. Berger a little while ago, you said that some of the transactions reflected in the books that are Government's Exhibit 16 were not Mr. Rodman's transactions, is that right?

A Yes.

Q What percentage of the Power Conversion transactions on the books of C. I. Oren, Government's Exhibit 16, were by Mr. Rodman?

MR. BERGER: Objection, your Honor, no proper predicate as to whether he knows.

THE COURT: Overruled.

A Most of them, the majority of them.

MR. ENTIN: Your Honor, I move to strike that answer as being unresponsive to the question as to what percentage were those other than Mr. Rodman's.

THE COURT: Yes. Can you give a percentage as opposed to saying the majority.

THE WITNESS: Would this be in regards

to the number of transactions made by Mr. Rodman or made by others?

Q Either way. It comes out the same.

A I would say he did 90 per cent of the transactions.

THE COURT: Ninety per cent of the transactions in Power Conversion?

THE WITNESS: In Power Conversion.

Q Do you know Mr. Zammas?

A Yes, I did.

Q Do you see him here in the courtroom?

A Yes, sir.

MR. ENTIN: Concede identity.

Q How do you know him?

A He was at C. I. Oren & Company.

Q How often did you see him there?

A Most of the time.

Q By whom are you currently employed?

A The U. S. Securities Exchange Commission.

Q In what capacity?

A Securities investigator.

MR. LOWE: I have nothing further.

CROSS EXAMINATION

BY MR. ENTIN:

Q You are with the Securities and Exchange Commission?

A Yes, I am.

Q You perform what function?

A Securities investigator.

Q So you work for the government?

A Yes, I do.

Q Mr. Lindsay, where was your office at C. I. Oren?

A 39 Broadway.

Q How many floors was that building?

A The total number of floors in the building itself?

Q That C. I. Oren occupied.

A Two.

Q Was there one in the street level and one below the street level?

A They were both upstairs.

Q One on top and one downstairs?

A Right.

Q Which floor did you work on?

A The lower floor.

Q How often during the period of time that you were at C. I. Oren did Mr. Zammas come downstairs to your floor?

A A couple of times.

Q In six weeks, two times?

A I would say four times, maybe.

Q Four times in six weeks.

How many times did you go upstairs to observe the trading room?

A Twice, three times a week.

Q Twice, three times a week.

And is it your testimony that each and every time you went upstairs Mr. Zammas was there?

A No. Most of the time. Not each and every time.

Q So maybe once a week you would see him up in the trading room?

A No. It would be more than that.

Q Twice a week you would see him in the trading room?

A Right.

Q Over a six-week period you probably saw him a total of 12 times in the trading room, is that correct?

A Well, based on the number of times I went upstairs -- I can't actually say. It would have to be over 12 times. Somewheres between 12 to 18 times.

Q Over a period of six to eight weeks?

A Right.

MR. LOWE: Six to eight weeks or six weeks.

THE WITNESS: Six weeks.

Q What were you doing upstairs so much?

A I had to go upstairs to talk to the people in regard to the trades that I had downstairs.

Q Why did you pay particular attention to Thomas Zammas?

A I didn't.

Q Did you stop and talk to him?

A No.

Q Did you have conversations with him?

A No.

Q How are you sure you saw him each and every time you believe you saw him?

A Because I saw him. It was only a small office. It was one room.

Q And you are sure that you saw him two and three times a week?

A Right.

Q Do you know where Mr. Zammas' home is?

A Yes.

Q Where?

A Florida.

Q To your own personal knowledge, did he spend a great deal of time in Florida?

A I don't know.

Q You don't know?

A No.

Q You have compiled this nice summary for Mr. Lowe. I would ask you to look at it a second while I ask you some questions. You have a total number of ten transactions in that two-month period with Mr. Zammas in Power Conversion, is that correct?

A Yes.

Q Ten transaction?

A Yes.

Q When was the first transaction?

A In the month of August.

Q Do you know a date?

A No.

Q If I gave you this other book could you tell me a date?

A Yes.

Q Fine (handing).

MR. LOWE: Your Honor, if we could mark these documents it would probably speed things up a little.

16B.

Q Would it be easier if you used that?

A Yes, it would be.

(Government's Exhibit 16B for identification.)

Q What is the first day you have on there for a sale by Mr. Zammas?

A On August 11th.

Q How many shares of stock were sold by Mr. Zammas on August 11th?

A Two hundred.

Q What is the next sale?

A On August 29th?

Q August 29th?

A Yes.

Q How much was that sale?

A 2500 shares.

Q What is the next sale?

A On August 30th.

Q On August 30th how many shares were sold?

A 2500.

Q And the next one after August 30th?

A August 31st.

Q How many shares were sold then?

A Two thousand.

Q After August 31st?

A September 7th.

Q How many shares on September 7th?

A Two hundred.

Q And after September 7th?

A September 15th.

Q How many shares on that date?

A Two thousand.

Q And after September 15th?

A September 19th.

Q How many shares on that date?

A Nine hundred.

Q And after September 19th?

A September 20th.

Q And how many shares on that date?

A 5200.

Q What is the next date?

A September 26th.

Q How many shares were sold on September 26th?

A 2500.

Q Which comes to 17,900 shares, is that correct?

A It comes to 18,000.

Q It comes to 18,000?

A Yes.

Q Therefore, prior to September 28th Mr. Zammas had made 100 per cent of his sale transactions to Power Conversion, is that correct, prior to September 28th?

A Prior to September 28th -- I don't understand the question.

Q Prior to September 28th he had made 100 per cent of his sale transaction in Power Conversion at C. I. Oren?

A I don't know if that was 100 per cent. I only put together trades that were done at C. I. Oren.

Q That's what I'm talking about, the ones at C. I. Oren.

A Right.

Q They were all completely prior to September 28th, is that correct?

A Yes.

Q And as a matter of fact, 10,500 shares out

of 18,000 can be completed prior to September 14th, isn't that correct?

A Yes.

Q So between September 14th and September 22nd an additional 7500 shares was all that was sold, is that correct?

A 8600 shares.

Q I am talking to the 22nd, not the 26th.

A From the 14th to the 20th?

Q Right.

A 8100.

Q In order to sell these shares, Mr. Lindsay, isn't it necessary to own them first?

A Yes.

Q So even though there are no purchase transactions on your list at C. I. Oren it would be reasonable to assume that he bought these shares before he sold them.

MR. LOWE: The very wording of the question indicates the objection, your Honor. He used the word "assume."

THE COURT: Sustained.

Q Can one sell stock without owning it?

A Yes.

Q How?

A Short sales.

Q Do your records indicate that these were short sales?

A No.

Q If it is not a short sale, can one sell without owning it?

A No, not supposed to.

Q Based on your records did Mr. Zammas own these shares that were sold?

A Yes.

MR. ENTIN: No further questions.

THE COURT: Mr. Berger.

MR. BERGER: No questions, your Honor.

THE COURT: Any redirect?

MR. LOWE: Nothing, your Honor.

THE COURT: Thank you.

(Witness excused.)

THE COURT: Next --

MR. LOWE: Your Honor, I will offer the document marked 16B in evidence.

MR. ENTIN: No objection.

MR. BERGER: No objection.

(Government's Exhibit 16B was received in

evidence.)

MR. LOWE: I have nothing further.

The government calls Mr. Flocco.

THE COURT: Do you want to approach the bench?

MR. BERGER: May I have a two minute break before the next witness?

THE COURT: Yes.

MR. ENTIN: Your Honor, I would want to approach the bench at the side bar before Mr. Flocco testifies.

(Recess.)

(At the side bar.)

MR. ENTIN: Your Honor, I inquired of Mr. Lowe on Friday if there was any 3500 material. I have knowledge that there is 3500 material with regard to this witness that we have not been provided with. If I might give you the background -- I'm sure it is an inadvertence, you didn't do the work on it, Mr. Lowe. There was a case pending, City Bank, in this court. During that case, the attorney for City Bank showed my partner an SEC investigation transcript of Mr. Flocco dated the 12th day --

MR. LOWE: I can save you the trouble. I

apparently forgot to give you the 3500 material, for which I apologize. I will give it to you right now.

MR. ENTIN: From what I understand, it is voluminous --

MR. LOWE: It's about three pages.

MR. ENTIN: I would like your Honor to have the entire transcript in camera.

THE COURT: We will take this up after the witness has testified.

MR. ENTIN: I would like to prepare for cross examination, your Honor.

THE COURT: You are not entitled to it until after the witness has testified.

(In open court; jury present.)

L E O N A R D F L O C C O, called as a witness by the government, being first duly sworn, testified as follows:

MR. LOWE: May I proceed, your Honor?

THE COURT: Yes.

DIRECT EXAMINATION

BY MR. LOWE:

Q Mr. Flocco, what was your business in 1972?

A I was in the banking business.

Q By whom were you employed?

A First National City Bank.

Q What was your position at First National City Bank in 1972?

A I was a manager.

Q Manager of what, Mr. Flocco?

A Of the 2 Broadway Branch.

Q Do you know the defendant in this case, Thomas Zammas?

A Yes, sir.

Q Do you see him in the courtroom?

A Yes, sir.

MR. ENTIN: Identity conceded.

Q Do you know the defendant in this case William Rodman?

A Yes, sir.

MR. BERGER: Identity conceded.

MR. LOWE: Thank you, Mr. Berger.

Q How did you first meet Mr. Zammas?

A He was introduced to me by Mr. Rodman.

Q Did Mr. Zammas become a customer of the First National City Bank?

A He did, sir.

Q Mr. Flocco, directing your attention to Government's Exhibit 2A for identification, which I have

placed before you, are those copies of records made and kept in the ordinary course of the business of First National City Bank?

A They are, sir.

Q Mr. Flocco, you will have to keep your voice up. I can't hear you.

A I'm sorry.

They are, sir.

Q Was it the regular course of the business of the First National City Bank to make and keep records such as those?

A Yes, sir.

Q What kind of records are those?

A Temporary safekeeping receipt.

Q For what?

A For securities coming in or going out.

Q To whom or to what account do those particular records in front of you, Government's Exhibit 2A for identification, relate?

A To Mr. Zammas, sir.

MR. LOWE: The government offers 2A in evidence.

MR. ENTIN: Your Honor, it is voluminous. We would like to reserve our objection until the lunch break, until we have had a chance to go through the documents. It is offered as a cumulative exhibit and there are a myriad of documents there.

MR. LOWE: Just so the record should not make it appear that this is the first time the defendants have seen these, these have been available and, to my knowledge, have been looked at by at least one of the defense counsel.

MR. ENTIN: Your Honor, I strenuously --

THE COURT: The witness is going to be asked as to those records, I assume, is he not, Mr. Lowe?

MR. LOWE: Yes, your Honor.

MR. ENTIN: I have no objection to him being examined. Before I make any objection with regard to them coming into evidence, I would like an opportunity --

THE COURT: Do you have any objection to the admissibility of those documents which go to their admissibility?

MR. ENTIN: I don't know, your Honor, without sitting down and looking at them.

THE COURT: The witness has testified

that those were the records, business records, I assume.

Has he, Mr. Lowe?

MR. LOWE: Yes, your Honor. There are also a few pages which he hasn't correctly, or at least hasn't looked at and identified, which I will have him do.

MR. ENTIN: Your Honor, I may have objections as to relevancy and I don't know until I look at the documents.

THE COURT: Overruled.

Do you have any objection, Mr. Berger?

MR. BERGER: No, your Honor.

(Government's Exchibit No. 2A was received in evidence.)

Q Mr. Flocco, you have testified that these documents are safekeeping receipts for securities?

A Yes, sir.

Q What is a safekeeping receipt?

A It is when valuables are delivered to the bank for someone's account for disposition.

THE COURT: Please try to speak up and throw your voice to the lawyers in the back and the last juror can hear you.

THE WITNESS: Sorry, your Honor.

A It is records of securities or valuables coming into the bank for a final disposition.

Q Let me direct your attention specifically to a document in this group which bears the date October 2, 1972 (handing).

Is that a safekeeping record?

A No, sir, it is not.

Q What is that document?

A It is a letter.

Q From whom to whom?

A By Mr. Sammas.

Q To.

A To the bank.

This is authorized to deliver 1000 --

Q Don't read it, just answer the questions.

Are there other such letters in that Exhibit 2A?

A Yes, there is, sir.

Q And in addition to the letters and the safekeeping records, are there also documents received from brokerage firms, like delivery tickets that came in with the securities when they came in.

A There were several letters stapled to the bank.

Q If you could, the very first document that appears in this exhibit is marked "Safekeeping record.

Would you explain what the various entries on that record are? What information is there on those documents?

A This came in on September 19th from Evans & Company for the account of Thomas Zammas. It is marked loan collateral and it is 100 shares of Power Conversion.

Q So that in general, what is on the safekeeping record is the date the item was received, from whom it was received, for whose account it was received and a description of the item itself, is that correct?

A Right, sir.

Q And it also shows the purpose for which it was received?

A Well, in some cases it could, in some cases it couldn't until a disposition was given, sir.

Q When it says on the one you talked about for loan collateral, is that the pump --

A Then the disposition is there.

Q Indicating that that stock was collateral for a loan?

A Right, sir.

Q Turning your attention to approximately the middle of September of 1972, Mr. Flocco, did you have a conversation with Mr. Zammas about a loan transaction?

A We did, sir.

Q Do you recall approximately what the date of that conversation was?

A It's hard to determine the exact date, but I'd say it was around the middle of September.

Q Let me show you Government's Exhibit 305 for identification and ask you whether looking at that document can help you fix the date in any way of the conversation which you had (handing).

A It's a memorandum that I wrote, sir.

Q Does that refresh your recollection as to the date of your conversation with Mr. Zammas or the approximate date?

A Well, it's dated September the 18th, so I have to believe that that's around the date.

Q Where did this conversation take place?

A At the 2 Broadway branch of the First National City Bank?

A Yes, sir.

Q Who was present?

A Myself and Mr. Zammas.

Q What was the conversation?

A The conversation was about a secured loan.

Q What did you say and what did Mr. Zammas say at that time?

A Well, in essence, we talked about the loan, we talked about some brokerage firms and the bank doing a study on Power Conversion stock and that there would be an article written on the stock.

Q What did Mr. Zammas say about there being an article to be written about the stock?

A He didn't elaborate, sir, and I didn't ask him.

Q Did he say anything about where it was going to appear?

A I believe it was in -- in that there it says Value Line, sir.

Q Did you on behalf of the bank extend credit to Mr. Zammas subsequent to this conversation?

A We did, sir.

Q Showing you Government's Exhibit 2B for identification, can you identify those documents (handing)?

THE COURT: The question to the witness is whether he can identify those documents?

MR. LOWE: Yes, your Honor, that is the question.

A Yes. These are offering tickets, sir, and then there is a copy of a loan card, copy of a liability page.

Q Are those documents all copies of records made and kept in the ordinary course of the business of First National City Bank?

A Yes, sir, pertaining to loans.

Q And was it in the ordinary course of the business of First National City Bank to make and keep such records?

A Yes, sir.

Q Do those documents relate to the account of Thomas Zammas?

A All but one, sir.

Q Would you take off the one that does not?

A Well, actually it is cash collateral, which in essence was money that was segregated until the loan was paid, but it belongs to Mr. Zammas, yes.

Q Does that last page relate to the account of Thomas Zammas?

A Yes, it does, sir.

MR. LOWE: The government offers 2B in evidence.

MR. ENTIN: No objection.

MR. BERGER: No objection.

(Government's Exhibit 2B was received in evidence.)

Q Mr. Flocco, I believe you described the first three of the documents in this exhibit as loan offerings?

A Yes, siwr.

Q Could you tell us what that means?

A It meansd that any time credit is extended to a borrower it has to be approved by at least three officers of the bank and it shows the market and loan value of the securities and the purpose of the loan.

Q Who makes that record?

A The loan teller.

Q Starting at the upper right-hand corner on this top sheet at least, in the blank marked "Branch," is written in "2 Broadway."

That refers to the 2 Broadway branch of the bank, of which you were the manager?

A I was the second man in charge, but my title was manager.

Q It shows the date. Was that the date of the loan offering?

A Yes, September the 18th.

Q It shows offering by and in this one it has the name Thomas G. Zammas.

Is that the name of the borrower or the prospective borrower?

A That is the name of the borrowers.

Q Then a series of words with boxes, of which three have checkmarks, secured, new and purpose. Those boxes have checkmarks.

What does that mean?

A It means it was a secured loan by marketable collateral, it was the first borrowing and it is a non-purpose loan.

Q What do you mean by a non-purpose loan?

A It is not for the purpose of buying regulated securities.

Q What are regulated securities?

A Regulated securities are traded on the American Exchange and the New York Exchange.

Q And in what way are they regulated from the bank's point of view?

A Well, it is not from the bank, sir, it is the Government regulation.

Q But what kind of regulation is there that you must deal with?

A You can loan 50 per cent against over-the-counter stock, not regulated, on American you can loan 60 per cent, if it is not a purpose loan; and 70 per cent on the other, non-purpose.

Q What kind of a loan did you say this one was?

A Non-purpose.

Q It was for the purpose of purchasing non-regulated securities, is that right?

A Right, sir.

Q By that you mean over-the-counter stock?

A Power Conversion, yes.

Q The second one of these bears the date of 9/19.

Does that have basically the same kind of information as the other one?

A Yes, it does, sir.

Q And the third one is dated 9/20.

These are all 1972, are they not?

A Right, sir.

Q Does that one also have the same basic kind of information as the first two?

A It does, sir.

Q What is the total amount of the borrowing represented by those three documents?

A 206,500.

Q What?

A Dollars.

Q What is the next sheet, the fourth sheet down in the exhibit?

A It is a copy of the loan card, sir.

Q What is a loan card?

A There are five records that are kept in conjunction with a loan.

Q And one of those is a loan card?

A A loan card, right, sir.

Q What does the loan card show?

A It shows the same as the offering tickets, the dollar amounts and the dates going on and then finally a zero balance.

Q What is the next sheet down?

A It is a liability ledger, which is the same thing.

Q And what is the last entry, the last sheet?

A The last sheet is cash collateral, which means that securities were delivered out against payment, the funds segregated to pay off the loan, it looks like August -- I am sorry, October 3, 1972.

MR. LOWE: I have no further questions of this witness.

THE COURT: Any questions of this witness, Mr. Berger?

MR. ENTIN: Your Honor, we have a motion pending before your Honor which would take us --

THE COURT: Oh, yes.

At this time the jury is excused until two o'clock.

(Jury leaves the courtroom.)

MR. LOWE: Your Honor, in the interest of saving the Court's time and everyone else's, the Government will turn over the entire SEC transcript of Mr. Flocco's testimony. We had not previously done that, but basically I don't think we had to, but I don't see any good reason not to, rather than argue about it I would give it to the defendants to read at lunchtime.

MR. ENTIN: All right.

From what I understand, it is kind of voluminous and --

THE COURT: Just a moment now. This witness has testified only to certain records, as I see it, which are in evidence, and the only statement you are entitled to is any statement he has given to the Government relating to that testimony.

MR. ENTIN: Yes, your Honor.

THE COURT: There is no point in your taking our time to pore over evidence which has no relation to that.

MR. ENTIN: Your Honor, he has testified as to Thomas Zammas' -- could we have the witness excused for the purpose of this argument?

THE COURT: Yes. You are excused until two o'clock.

(Witness excused.)

MR. ENTIN: Your Honor, Mr. Flocco has testified as to the loan transactions of the defendant Zammas at the First National City Bank.

I would assume the relevancy of the testimony as to the loan transactions goes to the question of whether or not Mr. Zammas was a dealer under 77QB. That was one part of his testimony.

The other part of his testimony dealt with the article.

Your Honor, I have a good faith belief that what is contained in that SEC transcript is a great deal of material regarding Mr.Zammas' loan transactions with First National City Bank, and I believe I should be able to see it and be able to inquire intelligently into it.

THE COURT: Is that so, Mr. Lowe?

MR. LOWE: And apparently at least to show extent that is correct, your Honor.

A lot of --

THE COURT: Is this something you haven't read either, Mr. Lowe?

MR. LOWE: I haven't read all of it. I have read selected parts of it and one part I gave to the defendants. Apparently a good deal of it deals with other people in addition to Mr. Zammas.

THE COURT: Other people in what?

MR. LOWE: Other people and their transactions at the First National City Bank that affected Mr. Flocco and basically were loans by and large for the purpose of purchasing Power Conversion stock.

THE COURT: What I am getting at is whether there is anything in there which can be properly classified as 3500 material.

MR. LOWE: I think, your Honor, that technically speaking, that portion which is technically classified as 3500 material has been given to the defendants. It is a few pages.

Now, I think Mr. Entin can see this, because my initial reaction was not to give it to him, but I know that there is nothing in it that I really feel a desire

to hide so I would be perfectly happy to give it to him.

I am sure, I know how long it is, I know how big it is, I am sure he can have more than enough time during the luncheon recess to review all of it, even that portion relating to other people.

THE COURT: So you have already given him that portion of this witness' SEC testimony which is 3500 material, is that it?

MR. LOWE: That is correct, your Honor, yes.

THE COURT: And the rest of it you concluded is not, is that it?

MR. LOWE: That is correct, your Honor. But I am agreeing to give it to him anyway and, as I said, I am sure the luncheon recess is plenty of time for him to review it.

THE COURT: All right.

Mr. Lowe, how many additional witnesses do you have?

MR. LOWE: Two, your Honor.

THE COURT: So you will conclude today? Are they short witnesses or what?

MR. LOWE: Well, one of them for sure is short and I expect that the other one will be short as well, but I can't be positive of that.

THE COURT: The defendants should prepare to get their witnesses here, then, for this afternoon, by three o'clock.

(Luncheon recess.)

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AFTERNOON SESSION
2:00 P.M.

(In open court; jury absent.)

L E O N A R D F L O C C O resumed.

MR. ENTIN: Your Honor, before the jury comes in, perhaps inadvertently, we had a deposition sitting on our counsel table when we went to lunch, the testimony of this witness in a case known as the First National City Bank versus Zammas, a civil matter, which apparently somebody has taken or removed, and, your Honor, we have a great deal of difficulty locating it.

MR. LOWE: I know that I saw it this morning, sitting on the table. I also know that I didn't do anything with it and I am quite sure Mr. Shaeffer didn't either.

THE COURT: Are we all talking at once for the record? What is going on here.

MR. BERGER: Your Honor, I think that my law clerk inadvertently took the paper and brought it to a company to have it xeroxed, thinking it was a different document.

We can get it right now.

MR. ENTIN: Your Honor, it is essential to my cross-examination.

THE COURT: I am not going to permit you to delay this trial.

We have been at this for a while now. We don't permit that in this court. These devices for delay will not be tolerated. You had some business a while ago about how you had to go through a big thick document. Now I come in and the document disappeared. That was your responsibility and I am not going to wait for it.

Bring in the jury.

(Jury present.)

CROSS-EXAMINATION

BY MR. ENTIN:

Q Mr. Flocco, my name is Mr. Entin. I represent Mr. Zammas.

Mr. Flocco, you testified that in 1972, in September, you were in the banking business with the First National City Bank at the Broadway branch.

A Right, sir.

Q How are you presently employed?

A With the First National City Bank.

Q Which branch are you with now?

A Harrison.

Q Upstate New York?

A It is in Westchester County.

Q When did you first meet Thomas Zammas?

A I couldn't honestly say.

Q You have identified Government Exhibit -- I will show you this memorandum. Will this help refresh your memory?

A I could have met him before that, but I couldn't honestly say.

Q That is the first time you recall meeting him, sir?

A No. I think it was before that.

Q How much before that?

A Maybe a month or two, sir.

Q In August or in July?

A More or less, yes.

Q What was the purpose of the first meeting, if you recall?

A I believe he opened a checking account.

Q And did he open the checking account through you, sir?

A I couldn't honestly tell you, sir.

Q Was that a demand deposit account?

A Right, sir.

Q How did Mr. Zammas get to the bank, if you recall?

A How did he what, sir?

Q Was he introduced to you by someone?

A Yes.

Q By whom?

A By Mr. Rodman.

Q And did Mr. Rodman take care of this introduction in July when he opened a checking account or in September?

A I believe it was in July, sir, if that is the right date.

Q Then you would have opened the checking account because you met with Mr. Rodman, is that correct?

A I could have, I could have not. I don't really know.

Q But you remember Mr. Rodman introducing you?

A That's true, sir, but that doesn't mean he did anything at that time.

Q Except open a checking account?

A He may have, yes.

Q Was there any purpose given for this checking account?

A Other than the fact he was going to be in the New York area, no purpose at all that time.

Q And there was no unusual activity in the checking account to your knowledge until September, is that correct?

A I don't really know. I didn't go into the account.

Q Have you ever received an overdraft on that account?

A It would be difficult to say, sir.

Q You wouldn't know from the records that have been introduced, would you?

A No, sir.

Q In September of 1972, around the time of that memorandum, did Mr.Zammas come to you for the purpose of arranging a loan?

A He did, sir.

Q Do you recall any of the details of that meeting, sir?

A Well, details inwhat respect, sir?

Q What was discussed?

A The secured demand loan.

Q Did Mr. Rodman come with Mr.Zammas that day?

A I don't believe so.

Q Do you recall the approximate date of the meeting to get this demand loan?

A No, I don't remember the exact date, sir.

Q Was it prior to September 18?

A It could have. It could have been that date, it could have been after. I can't honestly say.

Q If it was after September 18, would you have

written a memo and dated it September 18?

A Sir, the loan went on September 18, so I could assume it was then or before.

Q But it couldn't have been after is what you are indicating to me?

A I wouldn't think so, no.

Q In this memorandum it indicates that --

MR. LOWE: I object to reading from a document not in evidence. No objection if the document is offered in evidence.

MR. ENTIN: Your Honor, I believe Mr. Lowe didn't put it in evidence and --

THE COURT: If you are going to read from some document, it has to be in evidence.

MR. ENTIN: I am not going to read from it, your Honor. I am going to ask questions from it.

THE COURT: All right. As long as you are not reading.

Q The purpose of the loan was to borrow how much money, Mr. Flocco?

A Roughly $90,000 at that time.

Q And did you at that time draw a note or have a note prepared for Mr.Zammas in the sum of $90,000?

A I believe there were several notes, not one.

Q Is that unusual under a circumstance such as this?

A No, not really. Why would you get a note for 90 unless everything went on on the same date?

Q In other words, it was to be a line of credit for $90,000 and it was to be used over a period of time, is that correct?

A Right, sir.

Q And the purpose of the account would be to purchase stocks and securities?

A Right, sir.

Q Did you give him blank notes to sign?

A I couldn't honestly say. I would assume I did, but it would be hard to say, sir.

Q You would assume you did, but you don't know?

A No, sir.

Q And did he sign whatever you gave him?

A He would have had to sign them for the purpose of the bank records.

Q The loan was opened on September 18, and it was blank notes. When did you dictate your memo?

A I can't really say. I can only look at the dates and say it is September 18. I don't really know.

Q Would you dictate and sign a memo the same day on which you had a conversation and approve loans?

A I would htink not, sir. I wrote them out in longhand.

Q So this typewritten memo we are referring to, the date of September 18 could conceivably have been actually prepared with your signature some time thereafter, is that correct?

A Could be, yes.

Q What this memo would most likely relate to would be a recording of what your original notes may have been?

A Well, the summation of what more or less took place, sir.

Q But it may have been prepared at a date later than is indicated, which is September 18?

A Could be.

Q To deal with the kind of account we are dealing with, would Mr. Zammas call the bank and tell him that I am expecting delivery of X number of shares of stock, please pay for them? Was that the normal procedure?

A No, I believe there were brokers' statements that came in for the deliveries of stock, duplicate copies.

Q Who did they go to?

A They would have gone to the bank's address.

Q When they got to the bank, would they then be sent to you?

A I would have seen them, yes.

Q Did you make any effort to ascertain whether or not Mr.Zammas had in fact ordered these securities for his account?

A Sir, our conversation indicated that stock was coming in. Why would I call him again?

Q If stock came in you never really questioned as to whether or not Mr.Zammas ordered the stock?

A I would have to say no, that's right.

Q So somebody could have ordered the stock using Mr. Zammas' name and you wouldn't have known about it, is that correct?

A Well, it would be very hard, sir. We had notes for each one of the transactions.

Q You have notes for each transaction from Mr.Zammas authorizing you to pay for the stock?

A That's true, sir.

Q How was Mr.Zammas introduced to you? Was he introduced to you as a private investor?

A As a businessman from Miami.

Q He was introduced to you as a financial con-

sultant?

A Yes, that's right, sir.

Q And at all times when you dealt with him you dealt with him in that capacity, sir?

A Right, sir.

Q Did he discuss with you his work in the area of mergers and acquisitions?

A He briefly mentioned it, but we didn't get into any great depths.

Q When you say he briefly mentioned it to you, do you recall what he said to you in general?

MR. LOWE: I am going to object to that, your Honor.

MR. ENTIN: Statement of Mr. Zammas.

THE COURT: Let me hear the question.

(Question read.)

THE COURT: What is the objection?

MR. LOWE: Hearsay. I doubt they are offering it as being within the scope of the recognized exceptions of the hearsay rule such as admissions, statement in furtherance of scheme, et cetera. I don't think they offered it as any of those things. It is a self-serving declaration that should not be accepted for its truth when it is not subject to cross-examination.

THE COURT: What do you say, Mr. Entin?

MR. ENTIN: I would prefer not to argue this in the presence of the jury.

(At the side bar.)

THE COURT: Does this relate when he went into the bank to make the loan arrangements?

MR.LOWE: I believe it relates to when Mr. Zammas first opened up his checking account and what Mr. Entin is trying to establish is that Mr. Zammas would tell somebody he is a financial consultant or whatever, and Mr. Entin is going to use that argument to say he wasn't a securities dealer for that reason.

Regardless of the merits of the argument I don't think he is entitled to prove something like that through hearsay evidence. I think it has to be proved through people who observed Mr.Zammas engaging in that business or through Mr.Zammas himself taking the stand saying that he was a financial consultant. The fact he told somebody he was a financial consultant is not admissible evidence he was one, and that is the only purpose for which it could be offered. There is no other purpose for which that evidence can be offered except to prove the truth of it and it is a hearsay statement and should not be accepted.

THE COURT: That statement is already in. This witness has testified Mr. Zammas said that he was a financial consultant, he was introduced to him as a financial consultant. The present question is something else, isn't it?

MR. LOWE: It is an elaboration of the first. I wasn't fast enough to stop the first one.

MR. ENTIN: Your Honor, Mr. Lowe is very fast.

The only thing I would suggest to the Court, he opened the door and introduced into evidence a stack of transactions. The only reason he introduced a stack of transactions was to prove that Mr.Zammas was a dealer. I have a right to go in behind those transactions now which is what I am doing, as to whether or not he was a dealer or a financial consultant, and I intend to expand and go beyond also, as to other stocks that came into the bank that he doesn't have in the big package, to show Mr. Zammas didn't deal exclusively in Power Conversion with the bank.

MR. LOWE: Your Honor, I have no objection to any of that.

I simply object to Mr. Flocco testifying to what Mr.Zammas told him about what his actual business

was because Mr. Flocco has no personal knowledge of that.

Mr. Flocco dealt with him as a customer of the bank.

THE COURT: I would think that is right, Mr. Entin.

MR. ENTIN: Your Honor, it is not outside the presence of Mr. Zammas, not hearsay.

THE COURT: Mr. Zammas can take the stand and be cross-examined.

MR. ENTIN: I don't know yet, your Honor.

Your Honor, if you put it that Mr.Zammas testifies to the same conversation the Government can argue it is hearsay to Mr. Flocco.

THE COURT: No. Mr. Flocco is here. You are asking him about something Mr.Zammas said, this witness. The person who declares it has to be cross-examined.

MR. ENTIN: It can go to the state of mind, your Honor.

THE COURT: You can ask this witness what he said and Mr. Lowe can ask this witness what the witness said, plus he can ask him what the defendant said because that is an admission. Are you offering it as an admission?

MR. ENTIN: No, your Honor.

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THE COURT: Then it doesn't come in.

MR. ENTIN: Just one last thing, your Honor. I honestly have not attempted to use dilatory tactics, and if your Honor will recall -- and I think Mr. Lowe will vouch for this -- I wasn't the one that kept Bob Wymbs on the stand for two days.

THE COURT: I wasn't talking about that; I was talking about this document, the SEC record.

MR. ENTIN: I had another document on my desk that Mr. Berger's law clerk inadvertently carried out. He just wrote it back so it is not in issue any more. He had taken something that was mine thinking it was something else.

THE COURT: What is it?

MR. ENTIN: A deposition that had been taken of Mt. Flocco in another case in which Mr. Zammas and the First National City were involved, and I had some questions and answers out of that that I wanted to use. He brought it back.

THE COURT: You have it now.

MR. ENTIN: Yes. I just want to explain that I wasn't dilatory.

(In open court.)

Q Mr. Flocco, the government introduced and you identified a large stack of purchase orders which related to the stock of Power Conversion that had been made by Mr. Zammas. Do you recall that? It is Government's Exhibit 2.

Do you recall identifying these?

A Yes, sir.

Q Is it your testimony that for each one of these purchase orders there is a corresponding letter from Mr. Zammas approving the purchase?

A I didn't say that this morning, sir.

Q Did you say that just a few moments ago, that every time that stock came in from Mr. Zammas you would receive a letter from him authorizing the bank to pay out?

A No, I didn't say. I said we had notes for each one of the loans that went on.

Q So you never even made that cross check as to whether or not Mr. Zammas ordered these particular stocks, is that correct?

A We got duplicate copies of those, sir.

Q Was Power Conversion the only stock -- strike that.

Do these represent the complete bank records of all of the stock transactions that Mr. Zammas was

involved in?

A I believe they did, sir, yes.

Q Would it be your testimony that Power Conversion is the only stock that Mr. Zammas had, which the bank held as collateral for the loan?

A No, that's not so, sir.

Q Then he had other stocks, other than Power Conversion, to your knowledge?

A There were some others, yes, sir.

Q Do you recall what they were?

A No, sir, not offhand, but I know there were others.

Q How much was the total amount of the loan that you eventually lent Mr. Zammas?

A It was, I believe, 200-some-odd thousand, but I don't have the thing before me.

THE COURT: Will you please keep your voice up so the jurors and the lawyers can hear you, please?

THE WITNESS: Yes, ma'am.

(Document handed to witness.)

A It was 206,500.

Q You testified just a moment ago that the bank lent Mr. Zammas only 90,000. How did --

MR. LOWE: He didn't testify the bank

only lent him 90,000. That's a misstatement of the record.

Q You testified a moment ago the bank agreed to held him 90,000, is that correct?

A That's right, sir.

Q Is there any reason for the bank lending him twice that amount of money?

A On some of the offering tickets if you look at them you will see that there was stock delivered in that went out subsequent to that date to reduce the loans so that in essence it was over 90, but stock went out on 9/26 for 34,600; 9/27 for 121,400, so they must have all come in and then gone out for payment.

Q Was that --

THE COURT: I am not following that. I don't know whether the jury is.

Are you telling us that he borrowed money up to a certain point and then repaid it and then reborrowed more money the next day?

THE WITNESS: No, your Honor. The total loan was $206,500. On the 19th, or prior to that date, we received instructions to send out against payment $34.600 in stock. On the 28th we received instructions on that day or before to send out on the

27th 121,400, thus reducing the entire obligation.

THE COURT: So the bank did loan him $206,000?

THE WITNESS: Yes, your Honor.

Q The question I get back to again, Mr. Flocco, is that if the bank had agreed to lend him $90,000, why in fact did it lend him $206,500?

A It's tough for me to give you an answer now. It would be a little difficult to say. I know the stock came in against payment. We had instructions to deliver it out against payment, thus reducing the loan.

Q Isn't it a fact, Mr. Flocco, that securities were delivered to the bank for which the bank had to pay out in excess of the amount of Mr. Zammas' loan, and at the instructions of the bank the stock was sold in order to bring the loan back to ratio?

A One that became a brokerage account, yes.

Q In fact, what occurred is that the bank ordered the stock sold?

A No. We asked the loan be reduced.

Q In fact, ordered the stock sold?

A Not to my knowledge. We never ordered the stock to be sold. We just asked the loan be re-

euced.

Q Did you do so by formal memo?

A No, sir.

Q How did you do so?

A I called.

Q Do you recall the first date that you called Mr. Zammas to ask him to reduce the loan balance?

A No, sir, I can't give you the exact date.

Q Could you look at those notes and make an approximation?

A If this was on the 19th and the delivery was on the 26th, we would have to assume that you had seven days in order to make the delivery.

Q So it would have been in that time frame?

A This was on the 20th and the delivery was on the 27th, so it would have to be before that date.

Q Isn't it a fact, Mr. Flocco, that you often had difficulty reaching Mr. Zammas by telephone that he had to bring his account or loan back down?

A That's true, sir.

Q What was the reason you had this difficulty?

A I really can't say. He wasn't there.

Q Wasn't there a reason he wasn't there, sir, that you know?

MR. LOWE: The witness said he can't say what the reason was. He said he simply couldn't reach the man. Anything else would have to be hearsay.

THE COURT: Yes. Sustained.

Q When was the second time you called Mr. Zammas and asked him to reduce the loan balance?

A I can't give any dates.

Q Mr. Flocco, do you recall taking a deposition in a case known as First National City Bank vs. Thomas G. Zammas and Dorothy G. Zammas at the office of Wynn & Atlas, 30 Park Avenue, on June 24, 1974?

A I believe that's right, sir.

Q Do you recall the following question and answer being asked of you and being given:

"Q Did you ever reach Mr. Zammas in any of those prevouis overdraft situations that we have discussed earlier?"

Do you recall that question?

A More or less, sir, yes.

Q Do you recall this answer:

"A Mr. Zammas spent some time in New York and most of his time in Miami, so it was difficult to reach him at all times"?

Do you recall that answer?

A If it is there, sir, then I said it.

Q In fact, therefore, Mr. Zammas was difficult to reach on the phone because he wasn't in New York, isn't that correct, sir?

A I can't say, sir.

Q Was this truthful, this answer, was it truthful when you gave it?

A Sir, it is as truthful as I can give it to you. I can't really say.

Q And it was based on your own personal knowledge?

A If I couldn't reach it, what else can I say.

Q How did you know he was in Miami?

A If he lived in Miami and worked in New York and he wasn't in New York, I can assume he was in Miami.

Q I would assume you made constant efforts to reach him and were told that he was out of town, is that correct?

MR. LOWE: I object to what he was told, your Honor.

THE COURT: Sustained.

Q Mr. Flocco, is it normal procedure to make memoranda such as the memorandum of November 18th and

place them in a file?

A Yes, sir.

Q It is a normal practice?

A Yes, sir.

Q Is it done with every customer of the bank?

A It should be, yes, sir.

Q Was it done in the normal and ordinary course of business with Mr. Zammas?

A Yes, sir.

Q Is the September 18th memorandum the only memorandum that you wrote with regard to Mr. Zammas?

A I can't say. I don't have his file here, sir, so how can I say?

Q Wasn't it an unusual situation with Mr. Zammas?

A In what respect, sir.

Q You don't recall being requested by the bank to write an additional memorandum?

A You mean after this date, sir.

Q Yes, sir.

A Could be.

Q Could be, but you don't recall?

A Could be.

MR. ENTIN: Please mark this --

THE COURT: Do you want to know the next number?

MR. ENTIN: Yes, your Honor.

THE COURT: Defendant's Exhibit K.

(Defendant's Exhibit K was marked for identification.)

Q I show you this memorandum, which is Defendant's Exhibit K for identification, and ask you if you can identify it.

A Yes.

Q Do you recall when you wrote it?

A It says October the 11th, sir.

Q Does that mean it was written on October 11th?

A I can only assume that it was.

Q Do you recall the circumstances upon which you wrote this memorandum?

A To bring all of the information to date?

Q Isn't it a fact, Mr. Flocco, that you were requested to write this memorandum by the officials of the bank where you were employed?

A Could be, sir.

Q Could be, was or --

A Could be. I have it here. I have

written it. I am not denying I wrote it.

Q Isn't it a fact that you were requested to write this memorandum?

A Could be.

Q So you don't know, yes or no. When you were required or are you just saying could be?

A Sir, if I said yes, it wouldn't make any difference. It could be, as far as I remember.

Q Why do you say it wouldn't make any difference?

A It doesn't say anything that it didn't say anything in the others.

Q That's not the question I asked you.

Is it yes or is it no?

THE COURT: Is what yes or no, that he was instructed to write it?

MR. ENTIN: Yes, your Honor. I don't care whether it may or may not say anything different from others.

THE COURT: Are you trying to tell us that you can't remember whether you were instructed, that you only know you wrote it? Is that it?

THE WITNESS: That's right, your Honor.

Q Do you recall giving testimony, Mr. Flocco,

before the Securities and Exchange Commission on January 12, 1973?

Mr. Shaeffer, this gentleman here, was asking questions and you were giving answers, and you were represented by counsel; do you recall that?

A I gave testimony, yes, sir.

Q Do you recall the following question and answer -- page 113:

"Q I refer you to a memorandum that was written by you, Mr. Flocco, dated October 11, 1972. Just as an aside, all the memorandums seem to be dated October 11, 1972. Is there any reason they were all dated that date?

"A At the time I spoke with some of the senior people in the bank and we compiled a little story on each one of the individuals"?

Do you recall that question and that answer?

A Sir, I said to you before that this was a composite of all that had taken place.

Q Do you recall that question, Mr. Flocco?

A No, I do not, sir.

Q If I show this to you, Mr. Flocco, would this refresh your memory?

A It wouldn't. It's going back a couple

of years, sir.

MR. LOWE: Your Honor, I assumed that the purpose of reading that was that it was in some way indicative of the fact that he wrote it because he had been told to, but I didn't hear anything to that effect when it was read so I therefore wonder what the purpose of reading it was.

MR. ENTIN: Your Honor, it's a sequence of questions. If he didn't remember the first question and answer, I'll be glad to ask the next question and answer --

THE COURT: The witness is asked whether he was instructed to write the memo. He said that he could recall whether he was instructed; he knows that he wrote the memo. Now, you can read from his prior testimony. As Mr. Lowe says, there is nothing inconsistent with his answer that you just read.

The only purpose to use a statement made by a witness in court is to show that it is inconsistent with prior testimony.

MR. ENTIN: Your Honor, I am trying to show his present testimony differs from previous testimony because in the previous testimony he acknowledged he was instructed to write the memo. The next question

brings that out.

THE COURT: All right.

Q The next question you were asked is as follows:

"Q You were requested to do this by individuals at the bank?

"A Yes."

Do you recall that question and do you recall that answer.

A If I said it, sir, then it has to be so.

Q So, therefore, Mr. Flocco, you wrote this memorandum at the request of individuals at the bank and not of your own volition, is that correct?

A This one here, sir?

Q The October 11th --

A Right, sir.

Q I would assume, and -- strike that.

I would assume that you were requested to write this memorandum in order to give the senior officials at the bank an idea of what exactly transpired with regard to the relationship of the bank and Thomas Zammas, is that correct?

A It would have to be, sir, yes.

Q And in this memorandum did you go to your

file on Thomas Zammas when you prepared it and put down everything in this memorandum that you knew with regard to Thomas Zammas and his account at the bank?

A I really can't say, you know, where it came from, but I know these were a composite of the facts.

Q And you put down every material fact, is that correct?

MR. LOWE: I will object to that on the ground he couldn't possibly know what --

THE COURT: Yes.

Q Would you put down in that memorandum everything that was important enough for you to include in the memorandum of September 18th?

A I would have tried to remember what I thought took place, sir.

Q But didn't you have the memorandum of September 18th sitting there in your file telling you what had transpired on that date?

A That's true.

Q So you would have included in the October the 11th memo anything that was actually in the September 18th memo, would you not?

A Not necessarily, sir.

Q Why not?

A Because it might not have had any bearing on it at the time.

Q Was it significant in the writing of this memo on October 11, 1972, to inform your superiors at the bank as to the bases of your loan for Mr. Zammas?

A No, sir, because that was discussed prior to the loans being put on with other officers.

Q Why would the other officers then want this memorandum, to your knowledge?

A You would have to ask them, sir. I really can't answer you?

MR. LOWE: Your Honor, I have some difficulty in gathering the relevance of this line of questioning. For that reason I object to it concontinuously.

MR. ENTIN: I will be glad to tell it outside of the presence of the jury.

(At the side bar.)

MR. ENTIN: Your Honor, I have a good-faith belief that the memo of October 11th was requested of this witness along with memorandums on several other people who are involved, either directly or indirectly, in this case, that he was ordered to do so by members of the bank to give them a complete rehash of the involvement of these individuals with the bank because of the

bank's exposure on certain loans.

Nowhere in this October 11th memo does Mr. Flocco mention that the article, the statement about the article going to be appearing in Value Line, that he talks about in the September 18th memo, and it is the defendant's good-faith position no statement was made to him on or about September 18th about this and the September 18th memorandum was prepared later than the October 11th memo in order to substantiate his position in authorizing these loans.

MR. LOWE: I withdraw my objection.

(In open court.)

MR. ENTIN: Would you read the last u question.

(Question and answer read.)

Q Isn't it a fact, Mr. Flocco, that this was not the only memorandum you wrote on October 11th?

A Sir, I worked in a busy office. I could have written many memorandums on that date.

Q Mr. Flocco, isn't it a fact that this wasn't just an ordinary memorandum or series of ordinary memorandums?

THE COURT: Are you talking about more than one?

MR. ENTIN: Yes, your Honor, there are more than one.

THE COURT: You have asked the witness about one. Now you have gone into several.

Q Isn't it a fact, Mr. Flocco, that on October 11, 1972, you were instructed by your superiors in the bank to do memorandums on Thomas Zammas, William Rodman and other individuals and their loan transactions with the bank?

A Could be, sir.

Q Is it could be like it was before or is it yes?

A Sir, I can't answer you unless you show me what you have.

THE COURT: Mr. Flocco, if you can't remember whether you were so instructed, simply say I can't remember. You are here to testify only to what you can remember. Say "I don't remember that particular instruction."

Q Do you remember or you don't remember?

A I do not remember, sir.

Q I call your attention again to your testimony before the Securities and Exchange Commission and ask you if this perhaps refreshes your memory:

"Q What would you base those memorandums that you compiled on October 11th on?

"A Based upon all of the facts I knew.

"Q Had you made personal memorandums during the course of the preceding few months?

"A Oh, sure.

"Q I was going to -- let me refer you to this memorandum and we will mark it as an exhibit. The memorandum is attached to what appears to be documents relating to Mr. Rodman's loan account and I will ask you if you can identify that. What are the documents that are behind the memorandum?

"A Behind the memorandum is a loan card."

Do you recall those questions and those answers?

A Not offhand, sir.

Q If I show you this will it help refresh your memory.

A That's two years ago, sir, or better.

Q I know that --

THE COURT: The answer is it does not refresh your recollection. Does it refresh your recollection?

THE WITNESS: That's the answer.

No, your Honor.

Q So you do not recall doing a memorandum on October 11th on William Rodman?

A No, sir, not offhand.

Q Mr. Flocco, isn't it a fact that on October 11th, after the Power Conversion stock fell, the bank was left with several large loans unpaid?

A That's true.

Q And wasn't this a cause of some concern to the bank?

A That's true.

Q And isn't it also a fact, Mr. Flocco, that the bank wanted to find out why the money was lent?

A They had all the records to look at, sir.

Q Isn't it a fact that they came to you on October 11th and told you to write these memorandums on Zammas and Rodman and whoever else to explain what they felt were your erratic loan policies?

A That's not true, sir.

Q Are you still with the branch at 2 Broadway?

A No, sir.

Q Did you consider it significant on September the 18th, 1972 that Mr. Zammas told you that an article was going to be published in the Value Line next month?

A When you say "significant," in what respect, sir?

Q Did you consider it significant?

A I didn't ask him any questions so I couldn't consider it significant.

Q You put it in your memo. Didn't that mean it was significant?

A It's a trade paper, sir. There is a lot of stuff that gets said in the trade papers.

Q I call your attention to the memorandum of September the 18th that is sitting in front of you there.

MR. LOWE: Your Honor, for purposes of clarifying the record could I point out that that is Government's Exhibit 3505 for identification.

Q You included that in the memorandum of September 18th, did you not?

A That's right, sir.

Q Therefore you thought it was significant to record, did you not?

A I just put some of the facts together, sir.

Q And you didn't record that in your memorandum of October the 11th, did you?

A No, it is not in here, sir.

Q Isn't it a fact, Mr. Flocco, that the memroandum that is dated September the 18th was actually prepared some time after October 11th?

A That's not true, sir.

Q You don't know when it was prepared, do you?

A How can you say it was prepared October 11th?

Q Because would you have included in the October 11th memorandum those statements that you thought important in the --

A If it was in the file it was no sense recording it the second time.

Q I can accept that.

Was it in the file that on July 3, 1972 a deposit was established at the bank for checking purposes by Thomas Zammas? Was that in the file?

A It would be, yes.

Q You included that in the October 11th memorandum. Was it included in the file as a matter of fact, included in the memorandum of September the 18th, that you received a call from a Mr. Marcus, who was a registered representative at Dean, Witter, who told you that Tom Zammas had stocks in his portfolio in excess of $250,000? Was that in the file?

A It's in this memo.

Q You included that in the October 11th memo and it was in the file, isn't that correct?

A True, sir.

Q Is it also true that in the file was the fact that Mr. Zammas had requested that you accommodate him with secured loans of $90,000?

A That's true, sir.

Q And you included that in the October 11th memo?

A If you say so.

Q Do you have the October 11th memo?

A It's right here, sir.

Q Is it correct? Paragraph 3.

A That's right, sir.

Q Wasn't it in the file that on September 18th a $20,000 demand loan was made on your books and you held collateral securities valued at $167,000? Was that in the file?

A That's right, sir.

Q And that was included in the memo of September 18th, was it not?

A That's right, sir.

Q And that was included in your October 11, ?972 memorandum, isn't that correct?

A That's right, sir.

Q So obviously, Mr. Flocco, just because something was already in the file, it was not the reason it wasn't included in the October 11, 1972 memorandum, isn't that correct, sir?

A That's not so.

Q Everything I mentioned to you was already in the file, was it not?

A It's in the file, sir.

Q And you put it in the memorandum of October 11th, did you not?

A Yes.

Q In fact, Mr. Flocco, was not the October 11, 1972 memorandum a mere rehashing of everything that was in your file physically on October 11th?

A No, sir.

Q You just left out the thing about being told about Value Line accidentally, is that it, sir?

A No, sir, it's in the file.

Q But so was everything else, was it not?

A It was in the file, that's right, sir.

Q Mr. Flocco, you don't recall preparing the memorandum of October 11th, is that correct?

A No, sir. If I prepared it, my name is

on it, then I prepared it.

Q Is what you are telling us today, Mr. Flocco, that if you don't see it written down in front of you, you can't remember it?

A That's true, sir.

Q How long have you been a bank executive?

A I've been an officer since 1967, '68.

Q Have you also had a great deal of difficulty remembering things that happened at the bank?

A Sir, this happened over three years ago.

Q How often do you approve loans which lose for the bank funds in excess of $100,000?

A I can't answer that question, sir.

Q How often do you get requested to write special memoranda concerning transactions?

A You never know when you are going to be requested to write things for the bank.

Q What you are telling us then is that you have no independent recollection whatsoever of any of these conversations that you have related to with regard to Thomas Zammas other than what is written in front of you, is that correct?

A That's right, sir.

MR. ENTIN: Your Honor, on that basis I

move to strike the entire basis of the testimony.

THE COURT: Denied.

MR. LOWE: On the same basis I move into evidence the memoranda marked 3505 and Defendant's Exhibit K as past recollection recalled?

THE COURT: Any objection.

MR. ENTIN: No objection, your Honor.

THE COURT: L et it be received.

MR. LOWE: Defendant's K should become Government's 17, your Honor.

THE COURT: What is 17, please?

MR. LOWE: The October 11, 1972 memorandum by Mr. Flocco.

(Government's Exhibit 17 was received in evidence.)

cc MR. LOWE: The other one is 3505.

THE COURT: Would that become 18?

MR. LOWE: Yes, your Honor, if --

THE COURT: You are putting these in. Do you want both in?

MR. LOWE: Yes, your Honor. I didn't realize your Honor wants to change the number. The number 18 is fine.

(Government's Exhibit 18 was received in

evidence.)

BY MR. ENTIN:

Q Mr. Flocco, you have just testified a moment ago that absent those memoranda you have no independent recollection of the conversations you had with Mr. Zammas, is that correct?

A That's true, sir.

Q Mr. Flocco, the memorandum, which is now in evidence, reads as follows:

"It should be noted that Value Lines" --

MR. LOWE: Which document?

MR. ENTIN: It would be 18, your Honor.

"It should be noted Value Lines will be writing a favorable article next month on Power Conversion."

Q That was based on the notes you took at the time you talked with Mr. Zammas, is that correct?

A That's correct.

Q Isn't it a fact that Mr. Zammas never told you that the article was going to be published?

A I can'thonestly say, sir. I knew that it stemmed around that.

Q Isn't it a fact that it was just an offhand comment made to you that he knew that Value Line may have been interested in the company?

A That could very well be, sir.

Q You didn't ask him how he had this information, did you?

A No, sir.

Q You didn't ask him how he got the information, did you?

A No, sir.

Q Did you make an effort to check the factual basis of the information?

A No, sir.

Q Did you base your own upon that information?

A No, sir.

Q That you all recall, is that correct? You recall what you just testified to?

A That we never got into the specifics of any of that.

Q There came a time, did there not, in early October when you determined to reduce the loan in Mr. Zammas' account, is that correct?

A Can you ask me that again, please?

Q Did there come a time in early October when you made a determination that Mr. Zammas owed the Bank too much money and you wanted to liquidate the loan?

A That was before October, sir.

Q When was that, sir?

A It had to be in September some time.

Q When in September?

A If you have the memorandums that you just had -- the offering tickets; I'm sorry --

THE COURT: What exhibit is that?

THE WITNESS: 2B, I believe.

A -- in the one dated September 19ty it has on it "Loan to be reduced, 9/26, $34,600."

On the one for the 20th, "Loan to be reduced, 9/26, 34,600, and 9/27, 121,400."

Q Getting back to the first one, what was the date on that?

A That was the offering on the 19th with the date of the 26th, sir.

Q Does that mean on September 19th you told Mr. Zammas to bring the loan back down?

A It would have to be, yes.

Q On what date was the loan actuall brought back down.

A I can't read the dates here, but these are the dates the money came in for. September-something. I can't read the date, sir.

Q Can you go to the next one? You may be

able to read the next one.

A It shows that it was paid here on October 3rd. However, if you look at the cash collateral sheet here, you will see that there were credit balances from September 26th on, sir.

Q Does that mean that if you told him to reduce the account on September the 19th, it was actually reduced on September the 26th, which was approximately eight days later?

A There would be money going in on that date.

Q When would it be that it was reduced?

A The whole loan was paid then on October 3rd, sir.

Q So on October 3rd, Mr. Zammas owed the bank zero dollars, is that correct?

A That's right, sir.

Q On October 3rd did Mr. Zammas purchase an additional 2500 shares of Power Conversion to be delivered against payment of $97,487 on October the 3rd?

A I wouldn't know that, sir.

Q You couldn't tell that by looking at your tickets?

A No, not here, sir.

Q I am showing you Exhibit 17, fifth or sixth

paragraph.

A What's the question?

Q The question is: On October 3rd, after the loan was cleared up, was there $2500 in additional stock delivered to the bank against payment of $97,$87.77 .

A That's right, sir.

Q Did you recall Mr. Zammas that day?

A If it says so, I did, sir.

Q You called him for the purpose of telling you that you wouldn't add any more money to his loan, is that correct?

A That's right, sir.

Q Isn't it a fact that Mr. Zammas had paid his loan up to that point?

A This wasn't a loan, sir.

Q What was it?

A The securities were delivered against payment for his account.

Q That's correct.

Wasn't the purpose for his account for the purchase of securities?

A For the other deliveries, yes, sir.

Q Wasn't Mr. Zammas told that he had an open line of credit to the extent of $90,000?

A There is no open line of credit, sir.

Q What was the $90,000 that you lent him?

A That was a loan that went on but there is no open line of credit.

Q You had determined that after he had paid it back on October 3rd you weren't going to extend him the $90,000 credit any more?

A That's right, sir.

Q On what basis?

A On the basis that it was becoming a back-room operation, brokerage house, and the bank wasn't equipped to handle it.

Q Is that on your memo of October 11th?

A No.

Q Isn't that something you just made up now?

A No, sir.

Q Do you remember it clearly?

A I don't remember it clearly but I didn't make it up.

Q Isn't it a fact -- strike that.

When the 2500 shares of Power Conversion were delivered on October the 3rd, 1972, didn't somebody have to approve the payment by the bank?

A I approved the payments.

Q You approved the payment?

A For the securities coming in, yes.

Q And you had already determined that you weren't going to extend him the $90,000 loan any further?

A That's true, sir, and I called Mr.Zammas according to the memo.

Q Why didn't you just reject the stock?

A I don't know why I didn't.

Q You don't know why you didn't just reject the stock?

A No,sir, because he had complied with all of the other requests and said he would get a check down to cover.

Q Let's not jump ahead of ourselves, Mr. Flocco. You just indicated to me that you had made a determination on October 3, 1972, that because of what had transpired in this man's account you weren't going to be extending him any more credit, is that correct?

A That's true.

Q Then somebody comes to the bank with 2500 shares of stock worth $97,000 and you accepted it, is that correct?

A That's right, sir.

Q And then after you accepted $97,000 worth of stock on October 3, 1972, you then called Mr.Zammas and

said you are overdrawn, is that correct?

A That's not so.

Q What did you do?

A I called him when the stock came in.

Q After you paid for it?

A We didn't pay for it until late inthe afternoon.

Q What did he say?

A He said he would get it taken care of.

Q Did you tell him on October 3rd that the bank would not be lending him that money?

A He told me he would get a check down to cover it.

Q Did you tell him that the bank would not be lending him that money?

A The loan was paid, sir.

Q Mr. Flocco, did you tell him that the bank would not be lending him the money?

A That's true, sir.

Q You told him that?

A No, I didn't tell him that. I told him he would have to hve the check down for the stock --

Q But you never told him the bank wasn't lending him the money, is that correct?

A Sir, it was evident that all theloans were

paid.

MR. ENTIN: Your Honor, would you please ask the witness to just answer my question with a simple yes or no.

THE COURT: You don't know whether the witness understands the question or not. He said that he told Mr. Zammas he would have to get a check down for it which I assume meant that he wasn't loaning any money unless you had a check?

THE WITNESS: He had to pay for the stock, your Honor. He said he would send somebody down with the check to take the stock off our hands.

THE COURT: In other words, the bank was not going to take the stock?

THE WITNESS: That's right.

MR. ENTIN: Your Honor, that wasn't my question. I --

THE COURT: It wasn't clear to me.

Q The question is: When you had the conversation with Mr. Zammas on the telephone on October 3, did you say to him, "The bank will not lay out the money to purchase this stock"?

A No, sir, I didn't.

Q And, ineffect, did the bank lay out the money

to purchase the stock?

A We didn't purchase any stock. We only paid it for his account.

Q Did the bank lay out the money to his account?

A Right, sir.

Q In effect, lending him the money, is that correct?

A No, sir.

Q Was it his money you put in his account?

A No. He was going to send a check down to take the stock off our hands.

Q If the check hadn't come down for two days, would you have given Mr.Zammas a loan in the amount of $97,000 for two days?

A We went without a loan for two days until I couldn't get a hold of him. His account was overdrawn.

Q Where did you reach Mr. Zammas on October 3?

A I believe it was at Oren, but I am not sure.

Q Did you know Mr.Zammas to have any other bank accounts in which he would have $97,000 with which to pay you?

A I couldn't honestly tell you that, sir.

Q You signed up --

A I wouldn't know where he banked or what else he did.

Q Wouldn't you have asked him that question before you took his loan? Originally wouldn't you have asked him about bank accounts and --

A I believe we had one for a bank in Florida.

Q Did you have a financial statement?

A Yes.

Q In the financial statement did it have a list as to other bank accounts where this man would have access to $100,000?

A I couldn't honestly tell you, sir.

Q Wouldn't that be an important thing to determine prior to lending anybody a large sum of money?

A Do you have the other memorandum, sir?

(Handed to witness.)

A In this memorandum here it indicates that several weeks ago the writer received a call from Mr. Marcus, a registered representative of Dean, Witter and he informed me that subject had maintained an account with his firm over the last several years, and his portfolio was in excess of $250,000.

Q Does that tell you anything about bank accounts?

A No, sir, but it tells me the gentleman had securities there of $250,000, so I can only assume that he had a net worth in excess of that.

Q Did you ever ask from Dean,Witter a copy of the stocks Mr.Zammas had?

A I would have no right to that,sir.

Q Based upon what somebody told you on the phone that wasgood enough, is that correct?

A That's right, sir.

Q On October 3,1972, did Mr.Zammas come in to the bank with $100,000 to take care of the overdraft?

A No,I didn't see him, si

Q Did you attempt to reach him again on October 3?

A The 4th,the next day.

Q Did you speak to him?

A No, I didn't. Wait a minute, Excuse me.

I believe it was the next day sir.

Q Did you speak to him?

A No,I couldn't get him, if my memory serves me correctly.

Yes, here it is. The following morning when I didn't receive his check and the account was overdrawn,I again called Mr.Zammas to make the same request. His response was I thought that it had been done, however he would follow through andimmediately send me a check to cover the overdraft.

THE COURT: Are you reading from a document?

THE WITNESS: Yes.

THE COURT: What exhibit number?

THE WITNESS: 17.

Q Did Mr.Zammas come in on the 4th with a check to pay for the overdraft, sir?

A No, he didn't, sir.

Q Did you contact Mr.Zammas on October 5th?

A I couldn't get him on that date,sir.

Q You were still holding the 2500 shares?

A That's right, sir.

Q And you were holding that as collateral for the payment of the 97,000, is that right?

A That's right, sir.

Q What did you do when you couldn't reach him on October 5th? What was your next step?

A On October 5th I contacted William Rodman and he informed me unless I received a check today to cover the overdraft --

Q Why did you call Mr. William Rodman?

MR.BERGER: Objection, your Honor.

THE COURT: What is the ground?

MR. BERGER: Workings of the witness' mind. Not as to any conversation.

THE COURT: Overruled.

Why did you call Mr. William Rodman is the question?

THE WITNESS: Because he had introduced me to Mr.Zammas and I thought I could locate him.

Q Did you ask Mr. Rodman's permission to sell Mr.Zammas' stock?

A On the 6th I endeavored to contact Mr.Zammas again. I was unable to reach him, so I told Mr. Rodman I was going to sell the stock. I didn't ask his permission, sir.

Q And then you took steps to sell the stock on October 6, is that correct?

A That's right, sir.

Q Mr. Flocco, do you remember your testimony before the Securities and Exchange Commission on January 13,1973? YOu recall being there,do you not?

A That's right,sir.

Q Do you recall Mr.Schaeffer asking you questions? Page 79 -- strike that. Page 78.

Do you recall the following questions and answerrs:

"Q Did you have a business number for Mr.Zammas?

"A The business number was at C.I.Oren.

"Q At C.I. Oren?

"A Yes, sir."

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Do you recall that question and those answers?

A. If that is there.

"Q Who did you speak to at C.I. Oren?

"A I spoke to Bill Rodman.

"Q What date was this?

"A It would have been the 3rd and the 4th."

Do you recall those questions and answers?

A Not offhand. If it is there it has to be.

"Q So you had discussions with Mr. Rodman on the 3rd and the 4th?

"A Right, when I couldn't contact Zammas."

Do you recall that question and that answer?

A Not offhand, sir.

MR. LOWE: Your Honor, again it seems to me perfectly consistent with what he has been saying here on the stand.

MR. ENTIN: Your Honor, he testified on the 3rd and the 4th he spoke to Zammas. In the SEC testimony he couldn't contact Zammas.

MR. LOWE: I apologize.

Q "Finally on the 5th they authorized me to sell X number of shares of Power Conversion to take care of the obligation."

Do you recallthat response?

A Mr. Rodman sold his stock and I sold Mr. Zammas' stock.

Q I asked you if you recall the response?

A What response was that,sir?

Q The response that on the 5th "they authorized" you to sell X number of shares of Power Conversion to take care of the obligations.

A Mr. Rodman,yes.

Q But not Mr. Zammas?

A I couldn't get a hold of him.

THE COURT: The question is, do you recall that answer? Is that what you are asking him?

MR. ENTIN: Yes,your Honor.

Q Do you recallthat answer?

A I couldn't get a hold of Mr. Zammas.

THE COURT: The question is, do you recall that answer?

THE WITNESS: Not offhand, your Honor.

Q Do you recall the next question:

"Q Now you are talking about both obligations. Let's just deal with theZammas obligation.

"A Then Mr.Zammas authorized me to sell whatever shares we had to take care of the overdraft and remain and give him the remaining portion back.

"Q When did he authorize you to do this?

"A I believe it was very early on the morning of the 5th."

Do you recall that question and that answer?

A No, sir, not offhand.

Q If I showed you your testimony, will it serve to refresh your --

MR. LOWE: I will stipulate that that is his testimony, if that is the question.

MR. ENTIN: It might possibly refresh his recollection.

THE COURT: You can look at it and see if it refreshes your recollection.

A No, I don't.

Q You don't recall it?

A No, sir.

Q That doesn't mean that that is not what you said, does it?

A That's true, sir.

Q And the Government has stipulated that in fact you did say this under oath.

When you appeared before the SEC, did you raise your right hand and swear to tell the truth?

A That's right, sir.

Q So anything you may have told them that is in here supposedly was the truth?

A It still is,sir.

Q When it differs from the testimony you gave today, which is the truth?

A No, sir, no, sir.

MR. ENTIN: Your Honor, I would ask the witness to be responsive.

THE COURT: Do you understand the question? He has read to you your testimony before the SEC, which is different from what you have testified here today, that is, that in the SEC testimony you said that Mr.Zammas authorized you to sell, and in this testimony you said you spoke to Mr.Zammas and in the SEC --

THE WITNESS: For two days I couldn't reach him,your Honor. The date may be wrong, but in the two days I tried to get a hold of him I couldn't.

Q Mr. Flocco, you testified to the SEC --

A I did on the 3rd, sir.

Q So the testimony that you gave this jury, based on that memorandum of October 11th, that you spoke to him on the 3rd andon the 4th andon the 5th, was not true, was it?

A It was, sir.

Q Well, either you spoke to him or didn't.

A I spoke to him on the 3rd and the 4th.

Q What has refreshed your recollection here today?

A The sequence of events, sir.

Q Even though there was controversy between your testimony before the SEC under oath and your memorandum?

A There is no controversy.

THE COURT: The question was, what has refreshed your recollection. You said a sequence of events.

THE WITNESS: More or less what has taken place and going over it now, your Honor. I can't remember three years as far as a date.

Q This memorandum in October of 1972, was three weeks, approximately -- pardon me, one or two weeks after your transactioons with Mr.Zammas.

The SEC proceeding, your testimony was January 12, which was two months later. So, the testimony I am reading you is from two months later and from about two weeks later.

I am not asking you what you may have said earlier today.

In the memorandum of October 11, which is Exhibit 17, you had indicated that you spoke to Mr.Zammas on the 3rd and on the 4th. Is that correct, in that memorandum?

A That's right, sir.

Q And before the SEC, you indicated that you were unable to reach himon those dates, is that correct?

A Not to my knowledge, sir.

Q If it is in there, is that what you said?

A The dates couldhave been confusing to me.

Q Did you order Mr.Zammas' stock sold on October 5th or on October 6th?

A This says on October 6, sir.

Q In your SEC testimony that I read you a moment ago, the date given was October 5th. Which would be in error?

A Well, I would assume that the 6th was the date that it was done.

Q I didn't hear the answer.

A I would assume the 6th was the date it was done, but that is easy to check.

Q Can you check in any of the documents here?

A No,sir, but you should be able to get those. You can't change the dateof the sale.

Q So your testimony is now becoming that you received permission from Mr.Zammas on the 5th and consummated a sale on the 6th,is that correct?

A I didn't receive permission from him to sell.

Q So the testimony before the SEC that Mr.Zammas authorized you to sell the stock was a lie?

A It was not a lie,s ir. Maybe I didn't understand the questioner. I sold the stock on the morning of the 6th, I believe, which was a Friday, when I hadn't been able to get the overdraft covered.

Q So what you are telling me is, the testimony you gave under oath before the SEC may be untrue because you didn't understand the question, is that correct?

A It is not untrue,sir. The date could be wrong. It is not untrue.

Q Mr. Flocco, in your memorandum you indicate you sold the stock without permission. It doesn't deal with a date.

In your testimony before the SEC you state specifically that Mr.Zammas gave you authorization to sell his stock. It has nothing to do with the date.

One of those statements is unture. Which one is a lie?

A He signed these buy orders, sir.

Q He signed a buy order to sell?

A Purchase and sale of securities.

Q Do you have that with you?

A No,I do not, sir.

Q You do not?

A No, sir.

Q And it is not in any of the documents the Government introduced, is it, sir?

A No.

Q So you are sayingyou did have the permission of Zammas to sell his stock?

A No, they were obtained after that date,sir.

Q After that date?

A The stock was sold to cover the overdraft, I believe, on the 6th.

Q Who did you give it to sell?

A To an over-the-counter firm.

Q What is the name of the firm?

A JAB Securities.

Q Who is the principal in that firm?

A I believe it is Joe Buongiorno, but I am not sure, sir.

Q Why did you give Mr. Buongiorno the 2500 shares to sell?

A Because he has executed others on Power Conversion.

Q How many orders?

A I couldn't say, sir.

Q Was it 3000 shares?

A I couldn't honestly tell you.

Q Was it 3000 shares the day before?

A I couldn't tell you the number of shares.

Q You don't remember?

A No,sir.

Q Was this the normal method of selling stock in the bank to cover overdrafts, to give it to an over-the-counter house?

A He could expedite it, I assume.

Q You assumed he could expedite it. On what basis did you make that assumption?

A Because he had handled some other trades of the same stock.

Q When?

A Other stock that we had for his loan, sir.

Q Whose loan?

A JAB Security.

Q JAB Securities had a loan with you?

A Yes,sir.

Q How much was the loan for?

A I don't remember.

MR. LOWE: Your Honor,I object to the relevancy of this. This is going far afield.

THE COURT: Sustained.

Q Did you or did you not go, on October 5th, 1972, to the offices of C.I.Oren seeking Mr.Zammas?

A I could have, sir.

Q In fact, didn't you?

A I don't remember for sure, sir.

Q And when you got to C.I. Oren, Mr.Zammas wasn't there, was he?

A You asked me if I got there, so I can't remember. I don't even know if I got there.

Q Is it your testimony today that Mr.Zammas at a later time executed an order to sell the stock?

A That's true, sir.

Q I call your attention to the deposition taken in the office of Wynn & Atlas,on June 27, 1974, where you were asked the following question and gave the following answer:

"Q WhenRodman came in on the morning of the 6th, what transpired?

"A I already sold the stock from 10:00 o'clock on. He came in to sign my order for the sale of his securities.

"Q Who signed the order for Zammas?

"A No one did.

"Q You just sold the stock?

"A That's right. When it was evident in three days that I couldn't get a hold of him or get an item taken care

of, I sold the stock."

Do you recall those questions and those answers?

A Not offhand, sir.

Q That deposition was taken a year ago andyou don't recall the questions and answers?

A No, sir.

THE COURT: Excuse me, Mr. Entin.

We are going to take a 10-minute recess at this time.

The jury is excused.

(Jury leaves the courtroom.)

(Recess.)

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Tk 3A1 hpb-1 Flocco-cross

(In open court; jury present.)

MR. ENTIN: May I proceed,your Honor?

THE COURT: Yes.

BY MR. ENTIN:

Q Mr. Flocco, do you recall any other memorandums that you may have written on October 11th at the request of the bank?

A No, sir.

Q Did you write on October 11th a memorandum concerning the loan account of one Ronald Martini?

A The name strikes a bell, sir.

Q Did he have an account with your bank?

A I believe that he did, sir.

Q Do you know an Alan Umbogy?

A No,sir.

Q How about Periclese Constantinou?

A No, sir.

Q Did you handle Mr. Martini's loan account?

A No, sir.

Q Did you have knowledge of his loan account?

A Yes,sir.

Q Did you approve stocks coming in against his loan account?

A It wasn't my account, sir.

hpb-2 Flocco-cross

MR. LOWE: I don't think we got an answer to the question.

THE COURT: Would you read the question and the answer?

(Record read.)

Q Did you testify a few moments ago --

MR. LOWE: I said we didn't get an answer to the question. The answer is implied, but not a direct answer.

THE COURT: Did you approve loans for that account? Yes or no.

THE WITNESS: I believe the answer is yes, with two other officers, yes.

Q And that particular account, you approved loans based upon a loan collateral?

A That's right, sir.

Q Which were other securities? Were they not securities?

A Right.

Q Were the securities not Fantastic Fudge and Crystalography?

A I couldn't give you the names now, sir.

Q Mr. Flocco, have you ever received money from a depositor atyour bank or any other person coming in to your

bank for the purpose of opening a loan account?

A No, sir, definitely not.

MR. ENTIN: I have nothing further of this witness.

THE COURT: Mr.Berger?

MR. BERGER: I have no questions of this witness, your Honor.

THE COURT: Any redirect?

MR. LOWE: Yes,your Honor.

REDIRECT EXAMINATION

BY MR. LOWE:

Q Did the bank lose any money in connection with these accounts Mr. Entin was talking to you about?

A Which one?

Q Let's start with Mr. Zammas' account.

A I couldn't honestly tell you because I wasn't told,you know, what the final disposition was.

Q Was the bank paid on that overdraft you talked about?

A No,sir.

Q Do you know whether the bank ever collected on that?

A I couldn't say yes or no. I don't think so but Ican't say yes or no.

MR. LOWE: I have no further questions.

MR. ENTIN: I move to strike the last answer, your Honor, he said he didn't know.

MR. LOWE: I agree, your Honor.

THE COURT: All right, it is stricken.

Anything further? If not, the witness is excused.

(Witness excused.)

MR. LOWE: The Government calls Mr. Mackey .

J O H N M A C K E Y called as a witness by the Government, having been first duly sworn, was examined and testified as follows:

MR.LOWE: May I proceed, your Honor?

THE COURT: Yes.

DIRECT EXAMINATION

BY MR. LOWE:

Q Mr. Mackey, what is your occupation?

A I am an account representative for Dean, Witter.

Q How long have you been such?

A Five years.

Q Mr. Mackey, I amshowing you Government Exhibit 3B for identification. Let me ask you whether those are copies of reoords made and kept in the ordinary course of the business of Dean, Witter & Company.

A They are.

Q Is it in the ordinary course of the business of Dean, Witter & Company to make and keep recordsof that nature?

A It is.

Q Is that record an account statement of a customer?

A That's right.

Q I am showing you Government Exhibit 3A for identification, Mr. Mackey. Is that copies of records made and kept in the ordinary course of the business of Dean, Witter & Company?

A It is.

Q And was it the regular course of the business of Dean, Witter & Company to make and keep records such as Government Exhibit 3A for identification?

A Right.

Q Is that also an account statement?

A Yes,this is an account statement.

Q Can you tell us to whose account those statements apply?

A 3B applies to Mr. Thomas G.Zammas, Miami, Florida, and also 3A.

Q What is the period of time reflected on those

account statements?

A 3B covers from April 30, 1972 through to October 29, 1972. 3A applied from April 30, 1972 through to October 29, 1972.

Q Do they reflect transactions in securities for the account of Thomas Zammas during that period of time?

A That's right.

MR. LOWE: The Government offers 3A and 3B in evidence.

MR. ENTIN: No objection.

MR.BERGER: No objection.

THE COURT: Let them be received.

xxx (Government Exhibits 3A and 3B were received in evidence.)

Q Mr. Mackey, directing your attention to Government Exhibit 3B in evidence, what kind of an account is reflect-d in those statements?

A This is a cash account. These are cash accounts all the way through.

Q What is the meaning of a cash account in the securities business?

A It means an account where people buying and selling have to meet, if they purchase things, have to pay for them generally within five business days. If they

sell something, the money becomes free and available to them in five business days.

Q Directing your attention to the other documents, Government Exhibit 3A. What kind of an account is reflected there?

A These are margin accounts.

Q Could you explain to the jury what the meaning of a margin account is in the securities industry?

A It means that people can buy and sell and borrow at least part of the cost of the securities which they are buying or selling. In other words, they can take a loan from their broker.

Q Mr. Mackey, would you explain to the jury what the meaning of the term "put" is in the securities industry?

A A put is a right for the person who holds the put to deliver 100 shares of stock at a given price for a given period of time, and the person who sold the put to the individual who holds it has to buy the stock from him.

Q Directing your attention to Government Exhibit 3A, are there any put transactions reflected in those documents?

A Yes, I see some here, right.

MR. ENTIN: Your Honor, I object to the relevance of going into the specific transactions and the

nature of them. I don't see any rel-vance to this case whatsoever.

MR. LOWE: The question whether he is a dealer and question of motive.

MR. ENTIN: It wouldn't go to the question of dealer. It doesn't matter which kind of transactions. Motive is also not an issue in this particular case.

THE COURT: Overruled.

Q Could you point out the first such transaction?

A Right. This is on the April 30, 1972 statement. It looks like the client sold 50 puts for Power Conversion stock, good through 10/30/72.

Q What does 50 puts mean? How many shares of stock are involved in that?

A That would mean 5000 shares of stock.

Q And does that mean that Mr. Zammas had sold to someone the right to sell that many shares of Power Conversion back to him by October 30, 1972, at a specified price?

A That's right.

Q Mr. Mackey, could you explain mechanically how does a person who is selling a put go about doing it, at least through Dean, Witter?

MR.ENTIN: Objection, your Honor, again on the relevance of the mechanics of it.

A 202 Affidavit of Personal Service of Papers

LUTZ APPELLATE PRINTERS, INC.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,
Appellee,

- against -

THOMAS ZAMMAS, Appellant.

Index No.

Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF NEW YORK *ss.:*

I, James A. Steele *being duly sworn, depose and say that deponent is not a party to the action, is over 18 years of age and resides at* 310 W. 146th St., New York, N.Y.

That on the 26th *day of* November 1975 *at* 1 St. Andrews Plaza, New York, N.Y.

deponent served the annexed appendix *upon* **THOMAS J. CAHILL**

the **Attorney** *in this action by delivering a true copy thereof to said individual personally. Deponent knew the person so served to be the person mentioned and described in said papers as the herein.*

Sworn to before me, this 26th
day of November 1975

Robert T. Brin

James A. Steele
JAMES A. STEELE

ROBERT T. BRIN
NOTARY PUBLIC, State of New York
No. 31 0[illegible]
Qualified in New [illegible]
Commission Expires [illegible]